

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





ORIGINAL

75-7095

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**United States Court of Appeals**  
For the Second Circuit

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JAY HANDWERGER,

*Plaintiff-Appellee,*

*against*

CHARLES GINSBERG, JR., DAVID WEINTRAUB, ABRAHAM WEINTRAUB, ALAN R. CARP, JAMES P. SANDLER, A. THEODORE BARON, STANLEY FROST, EDWARD GINSBERG, NOAH GOLDBERG, JOHN W. HURLEY, ALLAN LAZAROFF, SANFORD L. ROSENBERG, HEINZ SCHNEIDER, ROBERT B. SEGAL, MARTIN UNGER, AARON WEINTRAUB, HARRY WEINTRAUB, SANITAS SERVICE CORPORATION,

*Defendants,*

ARTHUR ANDERSEN & Co.,

*Defendant-Appellant.*

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**Appeal from the United States District Court  
for the Southern District of New York**

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**JOINT APPENDIX**

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MILBERG & WEISS

*Attorneys for Plaintiff-Appellee*

*Jay Handwerger*

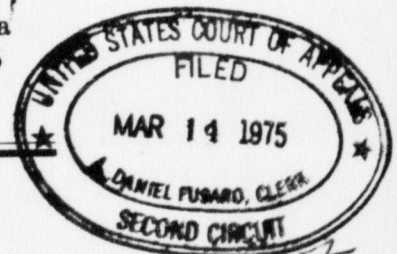
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### Relevant Docket Entries

73 Civ. 4832

DATE	PROCEEDINGS
11-12-73	Filed complaint and issued summons.
2-21-74	Filed Answer of Deft. Arthur Andersen & Co.
3- 8-74	Filed Answer of all defendants except Arthur Andersen & Co.
7-12-74	Filed pltf's affdvt. and notice of motion for class-action determination—ret. 8-5-74.
9-16-74	Filed Affidavit of Laurence V. Senn Jr. in opposition to pltf's motion for class determination.
9-17-74	Filed deft. Arthur Andersen memorandum of law in opposition to pltf's motion for class determination.
9-24-74	Filed supplemental affdt. of Laurence Senn, Jr.
10-31-74	Filed pltf's affdt. of David Bershad.
1- 2-75	Filed Opinion #41663 * * * granting class action status; appointing plaintiffs counsel as Lead Counsel; etc. Defendant Andersen's contention with respect to a limitation of its liability as to any facts coming to light after Sep-14-72, the date of its opinion, may be decided at a later date. It has no relevancy to the question of the class action determination. Plaintiff's counsel is to submit an order in accordance with this opinion and in form recommended in the Manual for Complex Litigation §1.45 at 159 together with a form of notice and a form of exclusion request. So ordered.—Werker, Jr. m/n
1-31-75	Filed deft. Arthur Andersen & Co.'s notice of appeal to the USCA for the 2nd Circuit from order granting pltf's motion for class action. —Copies to Milberg & Weiss, Esqs. and Mudge Rose Guthrie & Alexander, Esqs. Also to Charles W. Boand, Esq. in Chicago.
3-12-75	Filed stipulation designating copies of pages of deposition as part of the record on appeal.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- x  
JAY HANDWERGER,

Plaintiff,

COMPLAINT

- against -

CHARLES GINSBERG, JR., DAVID WEINTRAUB,  
ABRAHAM WEINTRAUB, ALAN R. CARP, JAMES  
P. SANDLER, A. THEODORE BARRON, STANLEY  
FROS, EDWARD GINSBERG, NOAH GOLDBERG,  
JOHN W. HURLEY, ALLAN LAZAROFF, SANFORD  
L. ROSENBERG, HEINZ SCHNEIDER, ROBERT B.  
SEGAL, MARTIN UNGER, AARON WEINTRAUB,  
HARRY WEINTRAUB, SANITAS SERVICE  
CORPORATION and ARTHUR ANDERSEN & CO.,

CLASS ACTION

PLAINTIFF DEMANDS  
TRIAL BY JURY

Defendants.  
----- x

Plaintiff, by his attorneys, Milberg & Weiss,  
complaining of defendants, alleges upon information and  
belief, except as to paragraph 5, which is alleged upon  
knowledge:

JURISDICTION, VENUE AND  
NATURE OF ACTION

1. This Court has jurisdiction of this action  
under Section 27 of the Securities Exchange Act of 1934 (the  
"Exchange Act") 15 U.S.C. §78aa as amended, and the principles  
of pendent jurisdiction.

2. The claims alleged herein arise under the  
Exchange Act, and in particular Section 10(b), the rules and  
regulations of the Securities and Exchange Commission pro-  
mulgated thereunder, and common law principles.

3. The acts complained of herein occurred in sub-  
stantial part in the Southern District of New York.



4. In connection with the acts, conduct, and other wrongs complained of herein, the defendants, directly and indirectly, used means and instrumentalities of interstate commerce and the mails.

PARTIES

5. Plaintiff, Jay Handwerger, is an individual residing at 486 Huron Road, Delmar, New York. Plaintiff purchased \$5,000 principal amount of convertible debentures of defendant Sanitas Service Corporation ("Sanitas") on or about January 23, 1973.

6. (a) Defendant Sanitas is a corporation incorporated under the laws of the State of Connecticut and has its principal place of business at 151 Walnut Street, Hartford, Connecticut.

(b) Defendant Arthur Andersen & Co. ("Andersen") was and is a firm of certified public accountants, with a place of business in the Southern District of New York. Andersen was the auditor for defendant Sanitas during the period of the wrongs alleged herein, provided various financial services, and rendered unqualified opinions with respect to various financial statements of Sanitas, including the statements appearing in Sanitas' Annual Report for the year ending June 30, 1972, as described herein.

(c) At all times material hereto, the individual defendants were directors and/or officers of Sanitas.

(d) The individual defendants were at all times material hereto controlling persons pursuant to §20 of the Exchange Act, 15 U.S.C. §78t.

CLASS ACTION ALLEGATIONS

7. Plaintiff is representative of a class as defined by Rule 23 of the Federal Rules of Civil Procedure and brings this action on behalf of himself and the entire class. This suit is properly maintained as a class action under Rules 23(a), 23(b)(1)(b) and 23(b)(3) of the Federal Rules of Civil Procedure.

8. The class consists of all persons who purchased securities of Sanitas between June 30, 1972 and June 30, 1973, during which period the prices of said securities were artificially inflated because of fraudulent misrepresentations and omissions as more fully alleged hereinafter and who were damaged by subsequent decline in said prices when the true facts were disclosed. During this time, Sanitas had approximately 8,300,000 shares of common stock and \$8,200,000 in convertible debentures outstanding, which were held by thousands of security holders throughout the country. Sanitas securities were traded at all relevant times on the American Stock Exchange. The class consists of many thousands of persons damaged by defendants' misrepresentations and omissions.

9. Plaintiff is an adequate representative of the class because he sustained damages and has the same interests as all the members of the class and he and his counsel will fairly and adequately protect the interests of the class.

10. There are questions of law and fact common to the class, which predominate over any questions solely affecting individual members of the class. Among the questions of law and fact common to the class are: whether defendants participated



in, conspired to, or aided and abetted the dissemination of false and misleading statements; whether defendants omitted to state material facts necessary to make other statements issued by them not misleading, the duty owed by defendants to members of the class; the resulting liabilities of defendants; the measure of damages, and the materiality and market impact of the challenged statements.

11. Class action is superior to other available means for the fair and efficient adjudication of the controversy.

#### SUBSTANTIVE ALLEGATIONS

12. Sanitas' Annual Report for the year ended June 30, 1972, and the financial statements contained therein, materially overstated Sanitas' profits, net assets and prospects, and were false and misleading in at least the following respects:

(a) They improperly reported (as a "subsequent event") the purported sale of the net assets excluding land, buildings and related mortgage of Sanitas' Economy Linen Service Division ("Economy Linen") and failed to disclose that said purported sale was merely a subterfuge to give the appearance that Sanit would suffer no further losses from ownership of Economy Linen. In fact, Sanitas continued to bear the risk of an unfavorable final disposition of Economy Linen.

(b) They variously reported that Economy Linen was sold to "a group of stockholders which includes the President of the Corporation, nine other members of the Board of Directors, and certain other stockholders", and

"to a partnership which includes several Sanitas officers and directors", without disclosing (1) that the sale was actually made to a limited partnership in which the aforementioned persons were merely limited partners with limited capital and limited liabilities; and (2) that the general partner was a corporation without substantial assets. Such reporting misrepresented that the buyer was financially responsible and that the individual Sanitas officers, directors and stockholders participating in the purchase were financially responsible for all the obligations of the purchasing partnership.

(c) They improperly established or reflected an inadequate provision for loss to be sustained on the sale of Economy Linen, in the amount of \$2,729,248. In fact, the loss actually sustained upon the ultimate disposition or liquidation of Economy Linen was in excess of \$5.6 million including the \$1 million working capital advance described in subparagraph (d) below.

(d) They failed to disclose that in connection with the sale of Economy Linen, the purchasers received the benefit of and agreed to repay to Sanitas a \$1 million working capital advance by Sanitas, which was equivalent to the so-called down payment of \$1 million described in the 1972 Annual Report.

(e) They failed to disclose the doubtful collectibility of the aforementioned \$1 million cash advance, and the \$1,615,569 promissory note received by Sanitas as partial consideration for the sale of Economy Linen.



13. Sanitas' interim reports for the three months ended September 30, 1972 and the six months ended December 31, 1972, each reported "Results from Operations" which materially overstated Sanitas' profits, and were false and misleading in at least the following respects:

(a) They failed to reflect the doubtful collectibility of the \$1,000,000 cash advance and \$1,615,569 promissory note received by Sanitas in partial consideration for the Economy Linen sale, and failed to establish adequate provisions for loss thereon.

(b) They improperly failed to reflect an adequate provision for loss to be sustained on the Economy Linen sale.

(c) They improperly failed to reflect continuing operating losses of the Economy Linen, despite the fact that Sanitas continued to bear the risk of an unfavorable final disposition of said Economy Linen.

14. The aforementioned treatment of the sale of Economy Linen was similarly disseminated by defendants in press releases and other pronouncement from June 30, 1972 to June 30, 1973.

15. The statements referred to in paragraphs 12, 13 and 14 hereof were false and misleading in that they contained various untrue statements of material facts and omitted to state other material facts necessary in order to make the statements made not misleading in light of the circumstances under which they were made. In issuing them, defendants employed devices, schemes and artifices to defraud, and engaged in acts, practices and a course of business which operated as a fraud and deceit upon plaintiff and other members of the class.

16. The financial statements in the report referred to in paragraph 12 were certified by Andersen. The items so certified failed to properly and fairly report the assets, earnings and business of Sanitas.

17. The reports referred to in paragraphs 12, 13 and 14 hereof were disseminated by Sanitas to its security holders, the press, brokers and dealers, financial research organizations and financial institutions, and the public.

18. Each of the defendants conspired to, effected, participated in, and/or aided and abetted the issuance of the aforementioned false and misleading statements, reports and filings.

19. Each of the defendants knew or should have known that the aforementioned reports and statements were false and misleading, and contained material omissions or was aware of facts which put said defendants on notice, or was recklessly negligent in not ascertaining such facts.

20. As a result of the dissemination of the false and misleading information and the failure to disclose material facts, as set forth above, the market price of Sanitas' securities was artificially inflated during the period between June 30, 1972 and June 30, 1973. In ignorance of the falsity of the reports and statements described above, plaintiff and the other members of the class relied, to their damage, on the integrity of the market prices of Sanitas securities during the said period in purchasing their securities.

21. Plaintiff and members of the class have suffered substantial damages as a result of the wrongs herein complained of by selling securities so purchased at a loss and/or by holding securities at market prices lower than their purchase price. In



addition, because of the acts complained of, the Securities and Exchange Commission has suspended trading in Sanitas securities, to the detriment of plaintiff and other members of the class.

WHEREFORE, plaintiff prays for judgment:

(a) Awarding plaintiff and all members of the class damages for wrongs herein complained of;

(b) Awarding plaintiff the costs and expenses of the litigation, including reasonable counsel and accounting fees; and

(c) Granting such other and further relief as may be just.

MILBERG & WEISS

By

*and [signature]*

A Member of the Firm  
Attorneys for Plaintiff  
One Pennsylvania Plaza  
New York, New York 10001  
(212) 594-5300





5. It denies the averments of paragraph 6(b), except admits that it is a firm of independent public accountants, that from time to time it rendered certain professional services to defendant Sanitas Service Corporation ("Sanitas"), in accordance with its engagement, and that it expressed an opinion with respect to the financial statements of Sanitas for the fiscal year ended June 30, 1972, which appeared in the 1972 Annual Report of Sanitas covering such fiscal year.

6. It admits the averments of paragraph 6(c).

7. It is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 6(d).

8. It denies the averments of paragraphs 7 through 11, and will set forth its position with respect thereto in response to the motion required to be made by plaintiff pursuant to Civil Rule 11A, subdivision (c).

9. It denies the averments of paragraph 12.

10. It denies the averments of paragraphs 13, 14 and 15, insofar as they may purport to relate to Andersen or to audit work performed by Andersen, or to the opinion expressed by Andersen appearing in the 1972 Annual Report of Sanitas. To the extent Andersen is not referred to in said paragraphs, it is without knowledge and information sufficient to form a belief as to the truth of the averments of said paragraphs.

11. It denies the averments of paragraph 16, except admits that it expressed an opinion with respect to the financial statements appearing in the 1972 Annual Report of Sanitas.

12. It denies the averments of paragraph 17, insofar as they may purport to relate to Andersen. To the extent Andersen is not referred to in said paragraph, it is without knowledge or information sufficient to form a belief as to the truth of the averments of said paragraph.

13. It denies the averments of paragraphs 18 through 21.

#### FIRST DEFENSE

The complaint fails to state a claim upon which relief can be granted against Andersen.

#### SECOND DEFENSE

Andersen, from time to time, was requested by Sanitas to render certain professional services in accordance with its engagement. Andersen, in making or causing to be made from time to time, in the course of its said services, any statement which may have been contained in any report or document filed with the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934, as amended, or any rule or regulation thereunder, acted in good faith, and had no knowledge that any such statement was at the time and in the light of the circumstances



under which it was made, false or misleading with respect to any material fact.

### THIRD DEFENSE

To the extent that any part of the 1972 Annual Report of Sanitas, which relates to a matter which is part of the claim sought to be alleged against Andersen, may be found to be untrue or to constitute material omissions, plaintiff knew or in the exercise of reasonable care or diligence could have known, of such untruth or omission.

### FOURTH DEFENSE

There is no causal relationship between the alleged wrong complained of and the claimed injury. Damage, if any, sustained by plaintiff was due to causes other than the matters alleged in the complaint.

WHEREFORE, defendant Arthur Andersen & Co. demands judgment against plaintiff, dismissing the complaint, together with the cost and disbursements of this action, including attorneys' fees.

Dated: New York, New York  
February 19, 1974.

BREED, ABBOTT & MORGAN

By \_\_\_\_\_  
EDWARD J. ROSS

Of Counsel,

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Handwerger

A 436 Huron Road, Delmar, New York.

MR. SENN: Before I start, may I make a statement on the record that we have moved to withdraw as counsel for A. Theodore Barron, a defendant in this action, and all of his rights with respect to this deposition are reserved.

MR. SPECTHRIE: I don't want there to be any contention at some point that he was not represented at the deposition; that we went ahead without all the parties.

MR. SENN: I have corresponded with his counsel who have informed me that they will not attend. I have discussed this with Mr. Bershad.

MR. SPECTHRIE: He has notice of the deposition and is not going to be here?

MR. SENN: That is right.

MR. SPECTHRIE: All right.

BY MR. SENN:

Q Could we start by your giving us your educational background?

A I attended New York University School of Commerce and graduated in 1955; and attended the School of Law of New York University and graduated in 1958.

Q In 1958 did you become employed?

15 A

1  
2 A Yes.

3 Q By whom?

4 A I became employed by Kreindler & Kreindler in  
5 New York City.

6 Q What is the business of Kreindler &  
7 Kreindler?

8 A They were basically in the litigation field  
9 relating to negligence.

10 Q This was a law firm?

11 A Yes.

12 Q How long were you with this firm?

13 A About a year and a half to two years.

14 Q Then what did you do?

15 A I went to work for Gordon, Brady, Caffrey &  
16 Keller, a law firm in New York City.

17 Q Did you specialize in any particular area  
18 with that firm?

19 A I did general work, but I would say most of my  
20 work was in the litigation area.

21 Q How long were you with this firm?

22 A Two to three years.

23 Q That brings us up to '62-'63?

24 A '62.

25 Q Where did you go to work then?



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Handwerger

16 A 6

1  
2 A I went to work for a very brief period for  
3 Investors Funding Corporation. That was about a  
4 two-month stint, a real estate corporation.

5 Q What were your duties there?

6 A Just general work.

7 Q Legal work?

8 A Legal.

9 Q Following that, by whom were you employed?

10 A The State University Construction Fund. I was  
11 appointed their counsel in 1962.

12 Q Are you still with them?

13 A Yes, I still am.

14 Q Still as counsel?

15 A As counsel and also as manager of fiscal affairs.

16 Q Mr. Handwerger, how much of a fund do  
17 you have to finance this litigation?

18 MR. SPECTHRIE: I object to the question  
19 on the ground that I do not think that you are  
20 entitled to go into this witness' entire financial  
21 situation.

22 If you wish to inquire as to his earnings,  
23 as to whether he will be able to finance the  
24 costs of this litigation, you may do so; but I  
25 don't think his entire financial situation is

relevant.

MR. SENN: That was not my question, sir.

Q Do you have a fund set aside with which to finance this litigation?

A No, not per se.

Q Do you propose to finance this litigation out of your current income?

A I am sure I can do that if it has to be done.

Q How much is your current income?

A More than \$40,000.

Q Are you related either by blood or marriage to any of the individual defendants?

A I am related by marriage to the former chairman and chief executive officer of Sanitas, David Weintraub. He is a cousin of my wife or second cousin, I guess; second cousin by marriage.

Q At the present time, Mr. Handwerger, what Sanitas securities do you hold?

A I hold 150 shares of common stock and eight 9 percent convertible debenture bonds.

MR. SENN: You have produced a confirmation slip which I show to you now. We will mark this as Defendants' Exhibit 1 for identification.

(Document referred to above marked



1 Defendants' Exhibit 1 for identification.)

2 Q Sir, I show you what has been marked  
3 as Exhibit 1 for identification and ask you if that  
4 refers to your purchase of the eight convertible bonds?  
5

6 A No, it refers to my purchase of five convertible  
7 bonds.

8 Q You had five previously?

9 A No, I had five. I had purchased three originally  
10 on October 1, 1970, and this purchase of five additional  
11 bonds was made in January, 1973.

12 Q That is a copy of the original which you  
13 have produced here today?

14 A Yes, it is.

15 Q When did you purchase the 150 shares of  
16 common stock of Sanitas?

17 A I purchased 100 shares on April 30, 1969; and  
18 the following year there was a stock dividend of 50  
19 shares additional.

20 Q At any time have you held any other  
21 securities of Sanitas?

22 A No.

23 Q So that every security you have bought or  
24 received in the way of stock dividends, you still hold?

25 A That is correct.

19 A 9

Handwerger

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1 Q Do you presently own any other securities?

2 A Yes, I do.

3 Q Are your holdings extensive?

4 MR. SPECTOR: I object to the question  
5 on the grounds that the word, extensive, is subject  
6 to many meanings.  
7

8 If you want to ask how many issues he owns  
9 at this point I have no objection.

10 Q In how many companies do you hold  
11 securities?

12 A I would say between ten and fifteen.

13 Q When did you first begin purchasing  
14 securities?

15 A I would say probably around 1958, or around that  
16 time. I am not sure exactly.

17 Q Prior to purchasing Sanitas securities,  
18 did you investigate the company?

19 A The original purchase, I had seen a red herring  
20 or preliminary prospectus; and I knew my wife's cousin  
21 was involved as the chairman of the board; and I  
22 followed the stock in the financial pages; so to that  
23 extent I did investigate it.

24 Q Did you ever look at any of the corporate  
25 filings with the SEC?



1  
2 A No.

3 Q Have you ever done that in connection with  
4 any purchase of any security?

5 A No.

6 Q Sir, could you tell us the basis for  
7 your decision to purchase the five convertible debentures  
8 in January of 1973?

9 A Well, I had reviewed the last annual report for  
10 the year 1972 and the first quarterly statement for  
11 the year 1973, and I always felt that Sanitas was  
12 in a growth area; and the one problem they had was  
13 this laundry division which they apparently had put  
14 aside by selling to a group of its officers; and since  
15 I had some cash available I decided that the best type  
16 of investment for me in Sanitas was to buy the  
17 convertible debenture, because I would not only have  
18 the possibility of future growth but also income at  
19 the same time.

20 Q Did you review anything other than the  
21 annual report and quarterly statement for the first  
22 three months, issued by Sanitas in connection with  
23 your investment decision?

24 A No.

25 Q You were a common shareholder?



1 the allegation as to the inadequate reserve or  
2 provision for loss in the amount of \$2,729,248?

3 MR. SPECTHRIE: I object to the form  
4 of the question. Are you asking him the source  
5 of his knowledge?  
6

7 MR. SENN: Yes, sir.

8 MR. SPECTHRIE: I have no objection.

9 A Would you tell me which allegation it is so I  
10 can read it?

11 MR. SENN: Page 5, No. C.

12 THE WITNESS: Yes, that is correct.

13 Q Subparagraph E on that same page, what  
14 is the basis of your allegation that the collectibility  
15 of the \$1 million cash advances on the promissory note  
16 was doubtful?

17 A Well, if you are selling to a limited partnership  
18 of whom only one general partner is liable and the  
19 limited partners invest nothing, it is obvious that  
20 there is doubtful collectibility, especially when the  
21 limited partners may have limited assets.

22 Q Is it your understanding that the limited  
23 partners contributed nothing to the partnership?

24 A As I understood it, they contributed nothing  
25 or very little; and in any case they were not liable

1 cause of the decline in value.

2 Q We could probably expedite this by letting  
3 Mr. Zirin go next.

4 EXAMINATION BY

5 MR. ZIRIN:

6 Q Mr. Handwerger, prior to the purchase of  
7 your five bonds on January 30, 1973, did you have any  
8 conversations with Mr. David Weintraub, relative to  
9 Sanitas business or its prospects?

10 A I think periodically at family functions I would  
11 see Dave maybe once a year, and ask in general  
12 conversation, "How is everything?" and he would say,  
13 "Everything is pretty good."

14 Q When you say once a year, are you referring  
15 to some particular annual function?

16 A A wedding or Bar Mitzvah, family function.

17 Q Would there be a wedding or Bar Mitzvah  
18 in your family once a year?

19 A It seems that there is. We have a very big  
20 family.

21 Q Do you recall the occasion prior to  
22 January 23, 1973 when you discussed with Mr. David  
23 Weintraub the business or prospects of Sanitas?

24 A What particular occasion are you talking about?  
25



1  
2 Q I am saying, do you recall the occasion  
3 next prior to January 23, 1973, the date of your purchase  
4 of five bonds, that you had occasion to discuss the  
5 business and prospects of Sanitas with Mr. David  
6 Weintraub?

7 A I would say within a month or two of that date  
8 I saw David.

9 Q Do you recall the conversation that you  
10 had with Mr. David Weintraub at this function, relative  
11 to Sanitas?

12 A I don't recall any. I can say I did ask him how  
13 things were at Sanitas and he said things were pretty  
14 good.

15 Q Was there any discussion about Economy  
16 Linen?

17 A No.

18 Q Was there any discussion about the annual  
19 report?

20 A No.

21 Q Was there any discussion about the  
22 transaction to which you referred under the heading,  
23 Subsequent Events, in the annual report?

24 A I did not go in any details relating to the  
25 operations of the company.

1  
2 Q Can you state the substance of the  
3 conversation you had with Mr. Weintraub?

4 A I already have. I asked, "How are things with  
5 your company?"

6 And he said, "Fine, everything looks good."

7 Q Did you talk about earnings?

8 A No.

9 Q Did you tell him you were interested in  
10 buying additional bonds?

11 A No.

12 Q Are you able to fix the date of your  
13 conversation with Mr. Weintraub?

14 A It was within a month or two of my purchase. I  
15 don't remember exactly.

16 Q That is to say, prior to your purchase?

17 A Yes.

18 Q At the time you had this discussion with  
19 Mr. Weintraub, were you contemplating the purchase of  
20 five bonds?

21 A I don't remember offhand, to tell you the truth.  
22 I think I have contemplated purchasing additional  
23 Sanitas securities from time to time, depending upon  
24 the availability of cash in my pocket.

25 Q Can you tell us when you formed the intention



Q Did you ever contact the company prior to January of 1973 to inquire about its affairs?

A No.

MR. SPECTHRIE: You mean other than conversations he may have had at family functions with Weintraub?

MR. ZIRIN: That is correct.

Q Do you recall when you received the 1972 annual report of Sanitas?

A I previously testified it was either November or December. I can't give you the pinpoint date.

Q Do you recall whether or not you saw Exhibit 2, the notice of meeting and proxy statement at or about the same time you saw the annual report?

A I would imagine it was at or about the same time. I don't recall exactly whether they came together.

Q Can you give us your best recollection?

A My best recollection is that they were, they probably arrived in my house within a week or so of each other, if not at the same time. I can't remember.

Q Is it your testimony that prior to January 23, 1973 or at such time that you purchased the five bonds that you did not know that the sale of the Economy Division was to a limited partnership?

A I did not know, even though the notice of annual meeting contained something in the rear portion stating that it was sold to a limited partnership; that did not strike a bell with me at that time. In fact, I don't remember reading that particular portion.

Q Page 7 of the proxy materials reads as follows:

"On September 14, 1972 the corporation entered into an agreement with a limited partnership pursuant to which the corporation has the right to sell to the partnership all of the assets, excluding real property, subject to certain liabilities, of the corporation, Economy Linen Service Division on or before January 5, 1973 at a price of \$2,615,569."

Did you note that sentence when you read the proxy material?

A As I previously testified, I don't remember reading this particular paragraph or that particular sentence.

Q Do you remember being apprised of this information in substance?

A I was apprised of the fact that the corporation had sold the division to a partnership. The annual report stated that. I did not and was not apprised, even though this states that the partnership was a



1  
2 a report on continuing operations after the issuance  
3 of the annual report.

4 Q Are you able to tell us which document  
5 influenced you more in making your purchase, Exhibit 5  
6 or Exhibit 4?

7 A I would say it was a combination of both of them.

8 Q To what degree did you rely on Exhibit 5?  
9 What particular information did you rely on in there  
10 in making your purchase?

11 A The significant thing of Exhibit 5 would be  
12 that the earnings --- is this the right one -- yes, the  
13 earnings for the first quarter had gone up compared  
14 to the previous year, and some of the statements of  
15 the president indicating some of the corporate  
16 development aspects of the company.

17 Q Is there anything in Exhibit 5 that you  
18 think that the company should have told you?

19 A When you say should have told me, I think they  
20 should have told me fully that the sale of this Detroit  
21 linen plant was to a limited partnership and there was  
22 considerable doubt as to whether the corporation  
23 received any funds in connection therewith.

24 Q It's part of your complaint that the  
25 company should have told you that in Exhibit 5?

Handwerker

25 A-2

50

1  
2 A They should have told it to me in Exhibit 5 as  
3 well as other literature put out shortly or on or  
4 around the time of Exhibit 5. Also, in the annual  
5 report which is Exhibit 4.

6 Q You would agree, would you not, that  
7 Exhibit 5 in terms of your purchase of five bonds was  
8 a more recent document than Exhibit 4?

9 MR. SPECTHURIE: I think the record speaks  
10 for itself. The documents are dated in such a  
11 manner that which is more recent is obvious.

12 MR. ZIRIN: I am trying to learn the  
13 operations of his mind in making the purchase.

14 THE WITNESS: Will you repeat the question?

15 (Question read back by reporter.)

16 THE WITNESS: I believe that is the fact.

17 Q If you had read the reference to limited  
18 partnership contained in Exhibit 2, the proxy material  
19 on page 7, is it your testimony that you would have not  
20 made your purchase?

21 MR. SPECTHURIE: I object to the question  
22 as to form because it's hypothetical, but the  
23 witness can answer.

24 A I think before I would have made a purchase I  
25 would have taken steps to find out who the general



## EXCERPT FROM SANITAS SERVICE CORPORATION ANNUAL REPORT 1972

The combined number of unissued common shares reserved for future earnings and market price contingencies resulting from acquisition agreements, stock option plans, the stock bonus plan and conversion of debentures is 2,072,578 shares.

The rights and preferences of the authorized preferred shares are to be established by the Board of Directors.

**6. Stock Options and Stock Bonus Plan:**

The Corporation's qualified stock option plan provides for the granting of options for a maximum of 400,000 shares of common stock to full-time employees at a price equal to the fair market value of the shares at the time of grant. The term of the option may not exceed five years. At June 30, 1972, options for 259,914 common shares were outstanding at prices ranging from \$2.00 to \$14.17 per share (aggregate option price \$2,254,334) and 82,112 shares were available for granting of options. During the year ended June 30, 1972, options for 18,550 shares were granted, options for 15,775 shares expired or were canceled and options for 9,990 common shares were exercised at a total option price of \$32,980.

The shares reserved for issuance under the Corporation's stock bonus plan were increased to 150,000 common shares by the stockholders on October 28, 1971. Under this plan, which expires on December 31, 1978, shares may be issued to key management employees but such shares may be returned to the Corporation if the employee terminates prior to completing six consecutive years of employment. During the year ended June 30, 1972, 1,675 shares with an approximate fair value of \$9,033 were awarded and at June 30, 1972, 84,825 shares were available for issuance.

On October 28, 1971, the shareholders approved the adoption of a nonqualified stock option plan which provides for the issuance of up to 150,000 shares of common stock to key employees. The purchase price of the shares under each option may be less than the fair market value of the shares at the time the option is granted. At June 30, 1972, options for 82,300 common shares were outstanding at prices ranging from \$4.75 to \$5.17 per share (aggregate option price \$391,861) and 65,700 shares were available for granting of options. During the year ended June 30, 1972, options for 84,300 shares were granted and options for 2,000 shares were exercised at a total option price of \$9,500.

**7. Subsequent Event:**

Subsequent to June 30, 1972, the Corporation entered into an agreement with a group of stockholders which includes the president of the Corporation, nine other members of the Board of Directors and certain other stockholders, to sell the net assets excluding the land, buildings and related mortgage thereon of the Detroit industrial laundering business in exchange for \$1,000,000 in cash and \$1,615,569 in promissory notes bearing an interest rate of 7% and due in 32 equal quarterly installments commencing January, 1975. The land and buildings which have a net book value of \$1,864,000 and an 8 1/4 % \$1,000,000 mortgage thereon at June 30, 1972, will be leased to the group of stockholders for a period of five years at an annual rental of \$228,000. The lease will also provide for a five year renewal option. The sale will be consummated on or before January 5, 1973, unless, prior to that date, the Corporation shall have received a bona fide offer to purchase the division for an amount greater than \$2,615,569.

The consolidated financial statements reflect the assets, liabilities and results of operations of the continuing operations of the consolidated group of companies, with the net assets and net loss of the Detroit industrial laundering division appearing as separate line items.

The extraordinary loss represents the difference between the net book value of the Detroit industrial laundering business at June 30, 1972, and the sales price.

Sanitas Service Corporation

**Consolidated Statement of Retained Earnings**

Year ended June 30, 1972 and 1971

25 A - 3a

	1972	1971
Balance at Beginning of Year .....	\$5,731,587	\$3,943,984
Adjustments resulting from poolings of interests (Note 1) .....	—	111,922
Balance at beginning of year, restated .....	5,731,587	4,055,906
Add (deduct):		
Net income .....	37,036	2,444,113
Dividends —		
Sanitas Service Corporation cash dividends of		
\$ .12 per share .....	(899,251)	(768,432)
Subsidiaries prior to acquisition .....	(7,000)	—
Retirement of treasury stock by subsidiaries prior		
to acquisition .....	(16,152)	—
Balance at End of Year .....	<u>\$4,846,220</u>	<u>\$5,731,587</u>

The accompanying notes are an integral part of this statement.

**Auditors' Report**

To the Stockholders and Board of Directors  
Sanitas Service Corporation:

We have examined the consolidated balance sheet of Sanitas Service Corporation (a Connecticut corporation) and subsidiaries as of June 30, 1971 and June 30, 1972, and the related consolidated statements of income, retained earnings and changes in financial position for the years then ended. Our examinations were made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

In our opinion, the accompanying consolidated balance sheet and consolidated statements of income, retained earnings and changes in financial position present fairly the financial position of Sanitas Service Corporation and subsidiaries as of June 30, 1971 and June 30, 1972, and the results of their operations and the changes in financial position for the years then ended, in conformity with generally accepted accounting principles consistently applied during the periods.

Hartford, Connecticut  
September 14, 1972

Arthur Andersen & Co.



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# **To the Shareholders:**

The fiscal year ended June 30, 1972 was a dramatic year for Sanitas Service Corporation.

Some of the results we report herewith are achievements based on many years of effort. It is, similarly, rewarding to note that our strength in human resources and our technology have been realized in such a manner as to indicate significant potential in the years ahead.

It is gratifying to be able to report record revenues and record earnings from continuing operations. For the full year, revenues increased 16% to \$74,899,952, compared with \$64,574,569 in fiscal 1971. Net income from continuing operations increased 29% to \$3,381,834, against \$2,611,923 for the previous year and earnings per share increased 21% to \$.46 per share as compared with \$.38 per share for the prior period.

One of the responsibilities of management is the constant evaluation of every phase of corporate operations with a view to spurring growth in as efficient a manner as possible. Another task is that of detecting weaknesses and attempting to correct such deficiencies by changes in product and service planning, reorganization of operations and marketing, changing of personnel - or elimination of those units where the potential simply does not justify the efforts involved.

After very careful study we have decided to sell one of our divisions, Economy Linen Service, of Detroit. This decision was based on Economy's poor past performance, labor difficulties and future prospects. It was not a decision which was made lightly. But, in view of the profitability and potential of other Sanitas operations, we found the retention of Economy to be entirely unjustified.

While it is possible that Economy might have been restored to profitability after a period of time

by investing a tremendous amount of management time and effort, it is questionable whether such an investment would be in the best interest of our stockholders.

Management feels that it is far more justified in a greater expenditure of efforts in such phases of its business as our Solid Waste Management Service Group. The companies within this Group have, in just a few short years, grown to the point where they contributed \$24,980,000 to our revenues last year and \$3,760,000 to our pre-tax income.

We have, accordingly, entered into an Agreement which gives Sanitas the right to sell, to a partnership which includes several Sanitas officers and directors, substantially all assets of Economy for \$2,615,000, their net tangible asset value. This sale will be consummated on or before January 5, 1973, but is effective as of July 1, 1972. A sale of Economy may be made, and we are actively seeking this, prior to January 5, 1973, to a group or company other than this partnership if the terms are more advantageous to Sanitas. Any other offer will be accepted if, likewise, judged more advantageous.

While we have reported a loss from Economy's operations for the year and charged our earnings with an extraordinary writeoff because of the loss sustained on the sale of this division, our balance sheet at the close of our fiscal year is considerably improved as compared with our financial picture of June 30, 1971. Our current ratio of 2-to-1 is composed of approximately \$20,076,000 in current assets and \$10,345,000 in current liabilities. It is noteworthy that our Industrial Laundering Service Group, exclusive of Economy, functions profitably.

The decision to sell Economy, while penalizing our net results for the previous year, will have a very favorable effect on our earnings this year. We



are encouraged by the strong trend of our operations thus far and, particularly, because of significant recent developments.

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The importance of efficient solid waste management is becoming increasingly recognized as a national problem and we are taking steps to increase our commitment to this important field. Early in this fiscal year, we hope to announce a number of acquisitions in the solid waste areas which will broaden our geographic coverage. The Consumat H-760 represents the most advanced technology in this area and we have sold these units to such cities as Houston, Texas, Hot Springs and North Little Rock, Arkansas, and Donaldsonville, Louisiana. We hope during this fiscal year, to commence our own start-up operations utilizing our Consumats to dispose of waste where it is generated, thereby sharply reducing disposal costs.

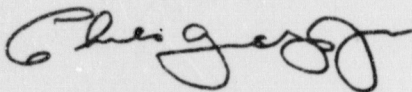
Of perhaps greatest significance to Sanitas are the recent study contracts award to our Sanitas Technology and Development corporation. In May, 1972 Sanitas was selected by the National Center for Resource Recovery, which represents a wide segment of U.S. industry, to determine the feasibility of the construction and operation of a municipal solid waste recovery facility for Tampa, Florida.

And, more recently, the town of Brookline, Massachusetts, has awarded us a contract calling for a study of their solid waste problems and recommendations for modern, efficient treatment.

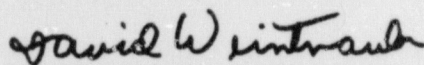
These awards underline, we feel, the soundness of our commitment to the field of solid waste management.

We are hopeful that we can, during the course of the year, report future advances in this area - and in other phases of our operations. A number of "self-starts" we plan during the year will expand our capabilities in building maintenance, security and pest control services to more cities and states than ever before.

Our growth has been based on our dedication to service - and it is our feeling that the need for highly professional service conscientiously performed, has, regardless of the economy, never been greater. It is in filling this vital need and in effecting economies for our clients that we see our greatest prospects for growth.



Charles Ginsberg, Jr.  
Chairman of the Board



David Weintraub  
President and Chief Executive Officer

EXCERPT FROM SANITAS SERVICE CORPORATION PROXY STATEMENT,  
ANNUAL MEETING OF SHAREHOLDERS, OCTOBER 25, 1972

25A-4

25A-4

Hornblower & Weeks-Hemphill, Noyes and W. E. Hutton & Co. were the representatives of an underwriting syndicate which made a public offering in January, 1972 of an issue of 725,000 shares of the Corporation's Common Stock. Hornblower & Weeks-Hemphill, Noyes received underwriting compensation aggregating approximately \$106,500 and W. E. Hutton & Co. received underwriting compensation of approximately \$76,000 in connection with such offering. Mr. Robert B. Segal, a director of the Corporation, is a Vice President - Corporate Finance Department of Hornblower & Weeks-Hemphill, Noyes and Mr. John W. Hurley, also a director of the Corporation, is a Vice President of W. E. Hutton & Co.

On November 30, 1971, the Corporation entered into an agreement with David and Abraham Weintraub, President and Executive Vice President of the Corporation respectively and each a Director, whereby, in consideration of the relinquishment by them of certain existing rights relating to the registration under the Securities Act of 1933 at the Corporation's expense of shares of the Corporation's Common Stock owned by them, the Corporation extended to them future rights to cause registration at the Corporation's expense.

The Corporation's subsidiary, Advance Cleaning Contractors, Inc. leases from a corporation in which Charles Ginsberg, Jr. and Edward Ginsberg, each a director of the Corporation, are principal shareholders, approximately 9,000 square feet of office, garage and warehouse space in Cleveland, Ohio, used as the headquarters and operating facility of that subsidiary. The lease, entered into November 29, 1967, expires on December 31, 1982, and provides for an aggregate annual rental of \$14,640 plus certain taxes and costs. For the fiscal year ended June 30, 1972, the Corporation paid \$3,100 of taxes attributable to the premises and \$4,300 of costs relating thereto.

Atlas Coverall & Uniform Supply Co. of Los Angeles, Atlas Coverall & Uniform Supply Co. of Santa Barbara, and Atlas Coverall & Uniform Supply Co. of Riverside (each a subsidiary of the Corporation) lease from corporations in which Allan Lazaroff, a director of the Corporation, is a controlling shareholder, three industrial laundering plants located in Los Angeles, Riverside and Sylmar, California, which have an aggregate floor area of 104,050 square feet and annual rentals of an aggregate amount of \$159,510 plus certain taxes and costs, with remaining terms of seven years. For the fiscal year ended June 30, 1972, the Corporation paid an aggregate of \$18,568 of taxes attributable to the three leased premises and an aggregate of \$7,412 in costs relating thereto.

On September 22, 1971, the Corporation purchased for \$143,000 approximately 9,000 square feet of office, operations and storage space situated on approximately 26,000 square feet of land located in Waterbury, Connecticut from Stanley Frost, a director and Vice President of the Corporation, and a family affiliate.

The Corporation believes that the terms and conditions of the leases and purchase described in this section are no less favorable to the Corporation than what could have been obtained by the Corporation from non-affiliated persons upon similar property.

On September 14, 1972, the Corporation entered into an Agreement with a limited partnership pursuant to which the Corporation has the right to sell to the partnership all of the assets, excluding real property, subject to certain liabilities, of the Corporation's Economy Linen Service Division on or before January 5, 1973, at a price of \$2,615,569. Among the members of the limited partnership are the following directors and officers of the Corporation: Phillip Astion (Vice President), A. Theodore Barron (Director), Louis Fritz (Secretary), Stanley Frost (Vice President and Director), Charles Ginsberg, Jr. (Chairman of the Board of Directors), Noah Goldberg (Vice President and Director), David Rosenberg (Vice President), Martin Unger (Vice President and Director), Abraham Weintraub (Executive Vice President and Director), David Weintraub (President and Director), Harry Weintraub (Vice



President and Director) and Louis Weintraub (Vice President). The Corporation's Board of Directors determined that on the basis of the Economy Linen Service Division's past performance, labor difficulties and future prospects it was in the best interests of the Corporation to sell the Economy Linen Service Division which sustained a pre-tax loss of approximately \$1,220,000 during the fiscal year ended June 30, 1972. The Corporation is actively seeking to sell the Economy Linen Service Division to a party other than the partnership prior to January 5, 1973, on terms more favorable to the Corporation than those contained in the Agreement. In the event that an offer to buy the Economy Linen Service Division is made by such a party, a committee independent of the Management of the Corporation will evaluate the offer in relation to the terms of the Agreement and will advise the Corporation's Board of Directors as to which offer is more advantageous to the Corporation. In the event that no better offer is received by the Corporation prior to January 5, 1973, the Corporation will sell the Economy Linen Service Division to the partnership. None of the directors who are members of the limited partnership will have voted on any resolution of the Corporation's Board of Directors relating to this matter. If the sale to the partnership is made, the Agreement provides that all of the assets of the Economy Linen Service Division, excluding real property, subject to liabilities to be assumed, will be sold on or before January 5, 1973, in consideration of One Million Dollars (\$1,000,000) at the Closing and the partnership's promissory note in the amount of One Million Six Hundred Fifteen Thousand, Five Hundred Sixty-Nine Dollars (\$1,615,569) bearing interest at the rate of 7 percent per annum and payable in thirty-two (32) equal consecutive quarterly installments of principal commencing on January 1, 1975, with interest payable in consecutive quarterly payments commencing April 1, 1973 until maturity. As security for the note the Corporation will have a primary security interest in the assets transferred and a second lien on any additional collateral given by the partnership to secure loans made to the partnership to finance the purchase of the Economy Linen Service Division. The purchase price of Two Million Six Hundred Fifteen Thousand, Five-Hundred Sixty-Nine Dollars (\$2,615,569) is equal to the tangible book value of the net assets of the Economy Linen Service Division to be sold as of June 30, 1972. The Agreement provides that if the sale to the partnership is made, the Corporation will lease to the partnership the building (approximately 185,000 square feet of floor space) and property which house the operations of Economy Linen Service Division. The Lease will provide for a five year term at an annual rental of \$228,000 plus certain taxes and costs and an option on the part of the partnership to renew for an additional five years on the same terms. The Corporation believes that the terms and conditions of the Lease are no less favorable to the Corporation than those which could have been obtained by the Corporation from non-affiliated persons upon similar property. As a result of the Agreement there was an extraordinary charge (representing the difference between the net book value of the Division at June 30, 1972 and the sales price) against the Corporation's income for the fiscal year ended June 30, 1972 in the amount of \$2,729,248 or \$.37 per share.

#### OTHER MATTERS

The Board of Directors knows of no other matters to be presented to the meeting, but if other matters do properly come before the meeting, it is intended that the persons named in the proxy will vote according to their best judgment.

Date: September 29, 1972

By order of the Board of Directors  
Louis Fritz, Secretary



## Results from Operations – Three Months Ended September 30,

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	1972	1971
Revenues .....	\$22,213,920	\$18,099,219
Pre-Tax Profit .....	1,978,190	1,671,952
Federal Income Tax .....	839,970	747,935
Net Income .....	1,138,220	924,017
Average Number of Shares .....	8,008,021	7,455,353
Earnings Per Share .....	14¢	12¢

### Record Results

The net income of \$1,138,220 or \$ 14 per share for the three month period ended September 30, 1972, makes this period the best first quarter in the history of Sanitas Service Corporation. These gratifying results are the product of the combined efforts of corporate and operational management, which have succeeded in securing several major contracts and further expanding the scope of existing operations during the first quarter.

### Annual Meeting Summary

At the Annual Meeting of Shareholders convened October 25, 1972, at the Hotel Sonesta in Hartford, shareholders re-elected four of the Corporation's fifteen directors to serve three year terms expiring in 1975.

Re-elected are:

- A. Theodore Barron, Executive Vice President of Sanitas Service Corporation
- Alan R. Carp, Senior Vice President of Sanitas Service Corporation
- Aaron Weintraub, Vice President of Sanitas Service Corporation
- John W. Hurley, Vice President of W.E. Hutton & Co., investment bankers

In addressing the Shareholders, David Weintraub, President and Chief Executive Officer of Sanitas Service Corporation, made particular note of "the marked development of Sanitas Service Corporation's participation in the national solid waste industry." Citing the internal growth rate of 20% in Sanitas waste operations in fiscal 1972, Mr. Weintraub stated that these results reflect the success of "a designed and deliberate corporate growth strategy" intended to increase and enhance the Corporation's position as a "major national solid waste management organization."

Mr. Weintraub further indicated a strong outlook for Sanitas operations in fiscal 1973, pointing out that during fiscal 1972, working capital had increased \$8,500,000 to approximately \$10,000,000 and that stockholders' equity had increased by \$3,000,000.

### Corporate Development

During the first three months of fiscal 1973, Sanitas acquired five solid waste collection and disposal firms with an approximate aggregate annual sales volume of \$4,200,000. The acquired companies are:

- Sumpter Sand, Inc., Detroit, Michigan
- Zebrowski & Associates, Inc., Indianapolis, Indiana
- Niagara Sanitation Company, Inc., Tonawanda, N.Y.
- Murtha Enterprises, Inc., Naugatuck, Conn.
- Tidy Rubbish Removal, Inc., Kensington, Conn.

Sanitas Technology and Development Corporation of Boston was awarded a contract by the Town of Brookline, Massachusetts for a comprehensive solid waste management analysis. According to the agreement, Sanitas will design an optimized system for efficient and economical management of the Town of Brookline's solid waste.

Elsewhere, Sanitas has reported receipt of orders for 14 more Consumat pollution-free solid waste disposal units. Contracts have been awarded for the installation of 8 units by the city of Hot Springs, Arkansas, for 2 units by the city of Stuttgart, Arkansas and for 1 unit each by the cities of Donaldsonville, Louisiana, Bentonville, Arkansas, Augusta, Arkansas and Marco Island, Florida.

In Detroit, Sanitas Waste Disposal Systems, Inc., has gained approval from the City Planning Commission for the construction of a five-acre waste disposal center to serve the greater downtown Detroit area. Scheduled for completion in January, 1973, the \$1.5 mil-



## 25 A-7

lion center will consist of a transfer station, maintenance garage, and administration building for the collection, compaction and disposal of solid waste.

Booth Services, Inc., a new member company of Sanitas Natural Resource Services, was awarded two contracts in the first quarter of fiscal 1973, totaling approximately \$1.5 million. The contracts, awarded by the Star Gas Co. and Dow Chemical Co., call for the installation of some 228 miles of pipeline to serve the greater Dallas area.

Sanitas Waste Disposal of Michigan, Inc., has successfully bid for a contract to handle the collection and disposal of solid waste in the Town of Ypsilanti, Michigan, and has also assumed operation of the transfer station formerly operated by the city of Lincoln Park, Michigan.

"These developments," according to David Weintraub, "taken as a whole, confirm our reasoned optimism towards Sanitas' continued success in fiscal 1973 and beyond."

# Sanitas

The Service Corporation

Sanitas Service Corporation  
151 Walnut Street,  
Hartford, Connecticut 06120  
Telephone (203) 549-2500



## Results from Operations—Six Months Ended December 31

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	1972	1971
Revenues	\$50,288,033	\$37,743,093
Pre-Tax Profit	4,051,028	3,131,136
Federal Income Tax	1,576,865	1,292,837
Net Income	2,474,163	1,838,299
Average Number of Shares	9,013,981	8,170,618
Earnings Per Share	27¢	22¢

### TO OUR SHAREHOLDERS:

Operating results for the first six months of the fiscal year tell a story of accelerated growth and improvement in all major categories of our operations.

Net income for the six month period rose 35% to \$2,474,163, or 27¢ per share, as compared to \$1,838,299, or 22¢ per share, for the comparable period last year. Revenues for the period amounted to \$50,288,033, an increase of 33% over the \$37,743,093 in sales for the same period last year.

Although all divisions of the corporation made a positive contribution to our six months results, the rapid growth and profitability of our solid waste operations was the most significant factor. The solid waste division was responsible for nearly half the corporate profits on a record sales volume of waste control services.

### Solid Waste Leadership

There were a number of major breakthroughs which gave further evidence of our leadership position in the solid waste market. In December, Sanitas broke ground for construction of a \$1,250,000 solid waste disposal center in Detroit. More than 16 additional pollution-free Consumat incinerator units have been ordered, including major installations in Marco Island, Florida, Hot Springs and Little Rock, Arkansas. We continued to expand our operation of sanitary landfills which now include more than 1,000 acres in various communities throughout the country.

### Energy Division

Our energy division, which services the inland and offshore petroleum industry in the Texas/Louisiana gulf areas, also experienced increased activity and made a substantial contribution to profit. Especially noteworthy was the use, by Booth Services, Inc., of a unique, new automatic welding technique to join pipeline sections in the construction of 186 miles of natural gas pipeline serving the greater Dallas area. The new pipe welding technique, praised by construction officials and Federal authorities, has been credited for bringing in a new era of pipeline construction which is expected to lower construction costs and ultimately the price of petroleum products to the consumer.

### Management Changes

At the time this financial report was being prepared, an important management change took place which will have

a substantial impact on the company's future. In January, William Abrams, prominent New Orleans banking and financial consultant, was elected President of Sanitas Service Corporation. I was named Chairman of the Board and will remain as Chief Executive Officer of the company. Our former Chairman, Charles Ginsberg, Jr., who was named Chairman Emeritus, asked to relinquish his duties as Chairman so that he could devote his time and talents to special projects on behalf of the company. The entire Sanitas organization owes Mr. Ginsburg a great debt of gratitude for his loyal and devoted service as Board Chairman.

Mr. Abrams joins Sanitas Service Corporation at a time when the company's earnings, revenues and operations are at the highest levels in its history. He brings to the company financial expertise and experience which will be invaluable in the next major phase of our development.

### Leading Through Strength

Sanitas Service Corporation is in a strong position to build for the future. Our financial base is solid. Our management at all levels of our operations is competent. In solid waste, natural resources, building maintenance and all other segments of our business, we are prepared to meet competition and increase our share of the continually improving markets for our services.

At the end of six months, we are on target toward our goals for the year to increase profits and generate revenues in excess of \$100,000,000. Although these goals are ambitious, I know they can and will be met.

*David Weintraub*

David Weintraub  
Chairman and Chief Executive Officer



David Weintraub



William Abrams



Charles Ginsberg, Jr.



## Results from Operations—Nine Months Ended March 31

25 A-9

	1973		1972	
	Amount	Per Share	Amount	Per Share
Revenues	\$74,654,788		\$56,632,412	
Pre-Tax Profit	4,494,226		4,211,262	
Federal Income Tax	1,666,585		1,750,904	
Income from Continuing Operations	2,827,641	31¢	2,460,358	29¢
Loss from Detroit Industrial Laundering Business	(1,920,000)	(21¢)	(74,573)	(1¢)
Net Income	907,641	10¢	2,385,785	28¢
Average Number of Shares	9,146,245		8,379,506	

### TO OUR SHAREHOLDERS:

As previously announced, the Corporation has established two reserves, totalling \$2,900,000, against the potential loss from a previously owned industrial laundering business in Detroit.

This industrial laundering operation was sold to a limited partnership which included officers and directors of the Corporation among its partners. The partnership, whose sole business was the operation of the laundry, sustained heavy losses from operations and was forced to sell the assets for amounts which, together with the partnership's remaining assets, will be substantially less than the amount owed the Corporation. The reserve established for the estimated loss on the receivable from the partnership was \$1,400,000.

The Corporation has also established a reserve of \$1,500,000 for an estimated loss from the proposed disposition of its limited purpose real property which housed the Detroit laundering facility leased to the partnership.

The after-tax effect of the reserves was a loss of \$1,920,000, or 21¢ per share.

Income from continuing operations for the first nine months of the fiscal year was \$2,827,641, or 31¢ per share. Net income for the nine-month period after the loss from the Detroit Industrial Laundering business amounted to \$907,641, or 10¢ per share, which compares with \$2,385,785, or 28¢ per share, for the same period last year.

Revenues for the first three quarters of the fiscal year increased sharply to \$74,654,788, compared with \$56,632,412 for the same period in 1972.

### Balance Sheet Highlights as of March 31, 1973

Working Capital	\$ 6,700,000
Net Fixed Assets	\$29,300,000
Long Term Debt:	
Convertible Debentures	\$ 8,200,000
Other	\$22,400,000
Stockholders' Equity	\$20,700,000

### CONTINUING OPERATIONS

#### Waste Control

Internal growth of member companies in the Waste Control Service Group and expansion of market share in the solid waste industry continue to top the list of priority corporate objectives. Revenues from services derived from the Waste Control Service Group for the

nine-month period ended March 31, 1973 increased 26% over the comparable 1972 period, testifying to the effectiveness of endeavors in this area.

In recent months, we have been commissioned by the Province of Quebec, Canada and the Town of Brookline, Massachusetts to conduct comprehensive analyses of waste control programs and to submit recommendations which will result in more efficient, economical and environmentally sound solid waste collection and disposal systems.

Progress in the areas of equipment standardization and systems integration throughout the Waste Control Service Group will improve the operating efficiencies required to maintain Sanitas' continued leadership in the solid waste industry.

#### Energy Services

We are also actively expanding efforts in the energy field in keeping with the high national priorities to solve the nation's growing energy crisis. New capital equipment has been purchased, and we are extending our field operations both domestically and overseas. Since our last report, two contracts, totalling \$6,100,000, have been signed for the construction of 220 miles of natural gas pipeline in Oklahoma and Texas. One of these contracts will utilize the automatic welding process which our Booth Services subsidiary has helped to develop.

#### Tri-Services Group

The building maintenance, pest control and security member companies have been consolidated into a single Tri-Services Group. Aaron Weintraub has been named President of Tri-Services, having served previously as Vice President of Sanitas' New England Regional Operations in contract cleaning and guard security. Mr. Weintraub has been a director of Sanitas Service Corporation for three years.

#### Laundries

In keeping with the Corporation's major objectives, as outlined above, we are currently reevaluating our position in the industrial laundering field to determine whether the assets realized from this sector of our business can be more profitably utilized.

#### Management Changes

Consistent with the shift in emphasis of our corporate policy to develop business aggressively in the solid waste

(over)

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and energy services markets, three significant additions have been made to the Sanitas Board of Directors.

William Abrams, who was appointed President of Sanitas Service Corporation in January, has been appointed to the Board and its Executive Committee. His wide familiarity with the energy field will be invaluable in guiding the Corporation into increased activity in this area.

Wallace M. Carline, President of Diamond Services Corporation of Morgan City, Louisiana, one of our largest energy services subsidiaries, was appointed to the Board of Directors, bringing to it the benefits of his broad experience and knowledge in the energy field.

Also appointed to the Board was John D. Kennedy, President of the Sanitas waste control subsidiary, Modern Trashmoval, Inc., of Baltimore, Maryland, whose knowledge and proven experience in the solid waste business will help strengthen the Corporation's capability to grow in this market.

*David Weintraub*

David Weintraub  
*Chairman and Chief Executive Officer*



William Abrams



Wallace M. Carline



John D. Kennedy



Aaron Weintraub

## Sanitas Service Corporation

151 Walnut Street  
Hartford, Connecticut 06120  
Telephone (203) 549-2500

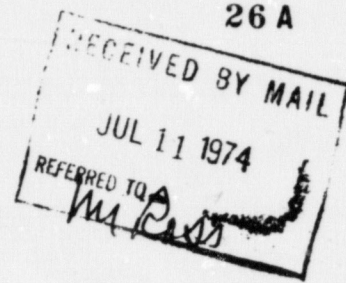


TIME TO

EXPIRES

*on post*  
*July 31*

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

JAY HANDWERGER,

Plaintiff,

-against-

CHARLES GINSBERG, JR., et al.,

Defendants.

73 Civ. 4832 (MIG)

NOTICE OF MOTION FOR  
CLASS DETERMINATION

S I R S :

PLEASE TAKE NOTICE that upon the annexed affidavit of DAVID J. BERSHAD sworn to the 8th day of July 1974, the exhibits annexed thereto, and all of the prior proceedings heretofore had herein, the plaintiff will move this Court on the 5th day of August 1974, or as soon thereafter as counsel can be heard for an Order:

1. Declaring that this action shall proceed as a class action pursuant to Federal Rule 23; and
2. For such other and further relief as to this Court may seem just and proper.

DATED: New York, New York  
July 10, 1974

MILBERG & WEISS

By: *[Signature]*

A Member of the Firm  
Attorneys for Plaintiff  
One Pennsylvania Plaza  
New York, New York 10001

TO:

BREED ABBOTT & MORGAN  
Attorneys for Defendant  
Arthur Andersen & Co.  
One Chase Manhattan Plaza  
New York, New York 10005



MUDGE, ROSE, GUTHRIE & ALEXANDER

Attorneys for Defendants:

Charles Ginsberg, Jr.,  
David Weintraub, Abraham  
Weintraub, Alan R. Carp,  
James P. Sandler,  
Stanley Frost, Edward  
Ginsberg, Noah Goldberg, John  
W. Hurley, Allan Lazaroff,  
Sanford L. Rosenberg, Heinz  
Schenider, Robert B. Segal,  
Martin Unger, Aaron Weintraub,  
and Sanitas Service Corporation

20 Broad Street  
New York, New York 10005

NUTTER, McCLENNEN & FISH

Attorneys for Defendant A. Theodore

Barron  
75 Federal Street  
Boston, Mass. 02110

SRIBERG, SRIBERG & BERMAN

Attorneys for Defendant A. Theodore

Barron  
140 Federal Street  
Boston, Mass. 02110

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x

JAY HANDWERGER,	:	
Plaintiff,	:	73 Civ. 4832 (MIG)
-against-	:	AFFIDAVIT IN SUPPORT
CHARLES GINSBERG, JR., et al.,	:	OF MOTION FOR CLASS
Defendants.	:	<u>DETERMINATION</u>

-----x

STATE OF NEW YORK )  
: SS.:  
COUNTY OF NEW YORK)

DAVID J. BERSHAD, being duly sworn, deposes and  
says:

1. I am a member of the firm of Milberg & Weiss,  
attorneys for the plaintiff and I make this affidavit in  
support of plaintiff's motion for class determination pur-  
suant to Fed. R. Civ. P. 23 and Rule 11A of the Civil Rules  
of this Court.

BACKGROUND

2. The complaint herein (a copy of which is  
annexed hereto as Exhibit A) alleges that the defendants  
violated the provisions of Section 10(b) of the Securities  
Exchange Act of 1934, Rule 10b-5 promulgated thereunder  
and principles of Common Law. The defendants are Sanitas  
Service Corporation ("Sanitas"), a public company whose  
securities are traded on the American Stock Exchange;



Arthur Andersen & Co. ("Andersen"), a firm of certified public accountants who were the auditors of Sanitas during the period referred to in the Complaint; and the officers and directors of Sanitas.

3. During the year ending June 30, 1972, Sanitas was engaged in several different businesses through the operation of divisions and subsidiary corporations. One of these businesses was called the Detroit Industrial Laundering Business (which was sometimes referred to as the Economy Linen Service Division and which will be referred to herein as "Economy Linen").

4. Sanitas and the other defendants reported that Economy Linen sustained gross operating losses of approximately \$1,220,000 for the twelve months ending June 30, 1972 and \$386,000 for the twelve months ending June 30, 1971. These increasing losses were a drain on the overall earnings of Sanitas and had a depressing effect on the market price of the securities of Sanitas. It would appear, that for the year ending June 30, 1972, Sanitas was doing quite well aside from the losses in the Economy Linen Division.

5. The complaint alleges that the defendants schemed and conspired to artificially inflate and maintain the market price of Sanitas securities by purporting to sell Economy Linen effective July 1, 1972 and leading the public to believe that Sanitas would no longer sustain any losses in connection with Economy Linen. It is alleged that the sale was illusory and that Sanitas continued to



bear the economic risk of further operating losses in Economy Linen and that the inability of the purchaser to resell Economy Linen would cause further losses in Sanitas. None of these facts were disclosed to the public.

6. In connection with the "sale" which was to take place as of July 1, 1972, the defendants set forth in the consolidated statement of income of Sanitas for the year ending June 30, 1972 an extraordinary item which purported to reflect the entire loss to be sustained by Sanitas on the disposition of Economy Linen, in an amount of \$2,729,248, which loss was in addition to the loss of \$1,220,000 from operations of Economy Linen. While the loss from operations of Economy Linen and the extraordinary loss to be sustained on disposition of Economy Linen had the effect of substantially reducing the net income of Sanitas for the year ended June 30, 1972, it also created the impression that all of the losses and bad news in connection with Economy Linen were behind Sanitas and that the future would no longer be marred by the poor operating results of that division.

7. In fact, the purported sale of Economy Linen was to a limited partnership. The general partner was a corporation and the officers and directors of Sanitas were the limited partners. On information and belief the corporation which acted as the general partner had limited assets and was unable to pay the purchase obligations incurred by the limited partnership. The limited

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partnership sought to sell Economy Linen to third parties and when it was unable to do so defaulted on the terms of its purchase agreement with Sanitas. This required Sanitas to report additional losses arising from Economy Linen of approximately \$2,900,000 in early 1973.

8. The initial publication of news that Sanitas was "selling" Economy Linen and that it would be treated as a "discontinued operation" was made on or about September 21, 1972 in a letter which Sanitas sent to its shareholders, including brokerage firms and members of the investment community. A copy of said letter is annexed hereto as Exhibit B.

9. The first disclosure of the fact that Sanitas would have to report additional losses arising out of Economy Linen notwithstanding the purported "sale" of that division was made on or about April 13, 1973 in a press release issued by Sanitas. A copy of that release is annexed hereto as Exhibit C.

#### CLASS DEFINITION

10. This motion seeks an order pursuant to Rule 23 declaring that this action proceed as a class action on behalf of all those persons who purchased securities of Sanitas during the period between September 21, 1972 (first announcement of the purported sale of Economy Linen) and April 13, 1973 (first announcement that Sanitas would be sustaining additional losses arising from Economy Linen)



and who sustained damages as a result of said purchases.

11. It is alleged that plaintiff and the class purchased securities of Sanitas through reliance on the inflated market generated by the aforesaid misrepresentations and omissions. The requirements of Rule 23(a) and 23(d)(3) are satisfied as follows:

NUMBER OF CLASS MEMBERS

12. Between September 21, 1972 and April 13, 1973 Sanitas had approximately 7,500,000 shares of common stock and \$8,205,000 in Convertible Debentures outstanding. Its securities were traded on the America Stock Exchange and it had approximately 7,500 shareholders in March 1973. It is apparent that the class consists of a great many persons and therefore is so numerous to make joinder of all members impracticable.

COMMON ISSUES OF LAW AND FACT

13. In view of the fact that the misrepresentations and nondisclosures alleged in the complaint arose out of written letters, statements, and reports carrying through the same pattern of nondisclosure and inflation of earnings, with a consequent inflation of the market price of Sanitas securities, the issues of law and fact herein are common to all the members of the class. Among said issues are the failure to make proper disclosure; the concealment of the true nature of Economy Linen sale; what the true effect

thereof would have been had they been properly disclosed; the role and liability of the individual officers and directors of Sanitas; and the failure of Andersen, when it certified the June 30, 1972 statement, to insure that it complied with Generally Accepted Accounting Principles, Generally Accepted Auditing Standards and the principles of fair reporting of Sanitas' business and assets and operating results to the public investors. Also common to the class would be the issue of the measure of damages sustained by the class.

#### TYPICALITY OF PLAINTIFF'S CLAIM

14. Plaintiff's claim is typical of that of each member of the class he seeks to represent. He alleges that he was defrauded by the inflation of the market generated by the defendants' false and misleading financial reporting of the business, assets and income of Sanitas. All the other members of the class are alleged to have been similarly defrauded. Plaintiff's interest in the matter is the same as and is not antagonistic to the interest of any other member of the class. Plaintiff seeks the same damages for himself and for the class arising out of the unlawful acts and transactions of the defendants.

#### ADEQUACY OF REPRESENTATION

15. Plaintiff will adequately represent the class. He has retained attorneys who are experienced and active in the field of securities and derivative and



class litigation. Deponent's law firm has been engaged as lead counsel in many cases involving substantial public corporations, among them Dolly Madison Industries, Merritt Chapman Scott Corporation, Technology Fund, R. Hoe & Company Inc., Conde Nast Corporation, Data Processing Financial and General Corporation, Harvey Aluminum Corporation, and others. The firm has played a leading role in many other well known litigations such as Texas Gulf Sulphur Corporation, Mill Factors Corporation, Dreyfus Fund, and others. The Courts have commented favorably on the expertise of your deponent's partners and his firm (See Feldman v. Hanley, 49 FRD 48, 51 (S.D.N.Y. 1969). This litigation will be pressed vigorously in the interest of the class.

PREDOMINANCE OF COMMON QUESTIONS OF LAW AND FACT

16. As set forth above there are issues of law and fact common to all the members of the class. Such issues predominate over any questions affecting only individual members. As set forth in the accompanying memorandum, individual proof of reliance is no longer required in an action such as this; even when it was required in older cases, such requirement was not a bar to class determination. The same is true of damages.

THE CLASS ACTION IS SUPERIOR TO  
OTHER AVAILABLE METHODS

17. Class determination will result in obvious economies of time and expense and will prompt a uniform decision with respect to all members of the class

throughout the country. In this case, class members whose claims are relatively small will have no particular interest in prosecuting separate actions. Without a class determination there is no practical way in which the class members can be or will be protected from the violations of the securities laws which Congress intended to protect the public.

18. There will be no great difficulty in the management of the instant case. There have been many similar cases involving violation of the Federal Securities Laws where class actions have been sustained. This action presents the classic pattern of circulation of financial statements and other communications with the intent and knowledge that over-optimistic and inflated earnings would create upward pressure on the market price of the securities involved. The purchasers of the securities should be readily identifiable from the company's stock transfer records. There will be no difficulties in management such as might be encountered in a mass consumer class action.

#### NOTICE


19. There is no problem with respect to notice in this case. The transfer records of Sanitas will list the name and address of all purchasers of its securities during the class period. Notice can then be sent to each class member by first class mail.

20. When the Court determines that this is properly a class action, counsel can agree among themselves,




subject to the approval of the Court, as to the contents in form of notice to be given to the class.

WHEREFORE, it is respectfully requested that the Court grant plaintiff's motion and declare that the instant action be maintainable as a class action, and further provide that if counsel for the parties cannot agree on the contents and type of notice, subject to the approval of the Court, that the Court hold a hearing with respect thereto and take appropriate action.

  
\_\_\_\_\_  
DAVID J. BERSHAD

Sworn to before me  
this 8<sup>th</sup> day of July, 1974.

  
\_\_\_\_\_  
RUTH C. HADGIS  
NOTARY PUBLIC, State of New York  
No. 03 4508537  
Qualified in Bronx County  
Commission Expires March 30, 1975

LETTER OF SANITAS SERVICE CORPORATION TO SHAREHOLDERS, DATED  
SEPTEMBER 21, 1972

## Sanitas Service Corporation

151 Walnut Street  
Hartford, Connecticut  
06120

Telephone  
(203) 549-2500

September 21, 1972

Dear Shareholder:

Since it will be some weeks yet before our Annual Report for fiscal 1972 is in your hands, I am using this medium as a special interim report to all Sanitas shareholders.

The fiscal year ended June 30, 1972 has been much more than a record year for Sanitas Service Corporation. We did effect significant gains in revenues which rose to \$74,899,952, an increase of 16% over \$64,574,569 in fiscal 1971. Our net earnings from continuing operations increased 29% to \$3,381,834 against \$2,611,923 in the previous year and earnings per share increased 21% to \$ .46 per share as compared with \$ .38 per share in the prior period.

You may have, by now, seen these figures in your newspapers- and there may be some questions as to the phrase "continuing operations". I feel that you will be interested in the story "behind these figures" and in knowing why we have chosen to sell one operation as well as what we have done and are doing to spur further corporate growth.

One of the responsibilities of corporate management is the constant evaluation of every phase of operations. This goes far beyond overall budgetary planning, supervision of successful units and ensuring that sales and earnings targets are attained.

When an operating unit is functioning at a substantial loss the duty of management is clear. It must stem the loss at the earliest practicable moment and decide on an alternative which is in the best interest of the corporation.

We have, for some time now, been faced with this problem in the Sanitas family. Only one division - Economy Linen Service of Detroit - has constantly marred the performance of our Industrial Laundering Service Group which, exclusive of Economy, contributes to our earnings.

We have, for some time, considered the sale of Economy because of its record, its labor difficulties and its lackluster potential. The final decision we have made to dispose of Economy was not taken lightly. But, in view of the achievements and the potential of other Sanitas operations, we regard the retention of Economy as simply unjustified. Concentrating management efforts on spurring our overall growth rate is, we feel, considerably more in the interest of our stockholders than the expenditure of months or years of effort in attempting to improve a weak unit with indifferent prospects.



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To cite but one of the factors motivating our decision, our Solid Waste Management Service Group has made such dramatic progress in a few years that, in fiscal 1972, it contributed \$24,980,000 to revenues and \$3,760,000 to pre-tax income. I am hopeful that we will be able to improve upon these figures significantly this year because, apart from internal growth, we are in the final stages of negotiations for the acquisition of several companies in this field. It is expected that announcements of these acquisitions will be made shortly.

Our commitment to the vital field of solid waste management is justified, I feel, by the fact that it is being increasingly recognized as a critical problem which is national in scope, by our operating results to date and by the indications we have for future growth. The acquisitions which we will consummate are only one phase of our expansion in this area. Also of significance are the recent study contracts awarded to our Sanitas Technology and Development subsidiary by the National Center for Resource Recovery and from the Town of Brookline, Mass., representing comprehensive analyses of solid waste management processes, recommendations and designs of modern and efficient systems. These awards underline, I feel, the soundness of our commitment to the field of solid waste management.

Sales of the Consumat H-760 represent another aspect of our work in the field of solid waste management. The Consumat offers modern, money-saving technology and is available now - and installations of these units will be made in the next several months in such cities as Houston, Texas, Donaldsville, Louisiana and Hot Springs and North Little Rock, Arkansas.

In addition, we expect to commence during this fiscal year our own start-up operations utilizing our Consumats to dispose of waste where it is generated, thereby sharply reducing disposal costs.

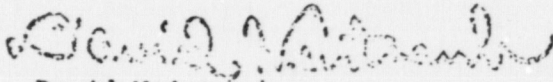
Other "self-starts" we plan during the year will expand local operations by "cross-fertilization" of our support services in building maintenance, security and pest control services. Our growth in these areas will be paced by our abilities to fill vital needs and effect economies for clients in a greater number of cities and states than ever before.

It is my hope that we can report substantial progress in the next several months. With prospects for expansion on a national scale so positive, I think you will agree that the subordination of these opportunities to prolonged involvement with Economy was not in the best interest of shareholders. We have, accordingly, entered into an Agreement which gives Sanitas the right to sell, to a partnership including Sanitas officers and directors, substantially all assets of Economy for \$2,615,569, their net tangible asset value. The sale will be consummated on or before January 5, 1973 but is effective as of July 1, 1972. We are actively seeking a sale of Economy, and this may be made prior to January 5, to any qualified purchaser other than this partnership if the terms are more advantageous to Sanitas.

We view this decision as a highly constructive move which should be favorably reflected in our earnings for fiscal 1973. I hope to report to you over the next few months, a number of corporate news developments and significant steps taken to sustain and improve our rate of growth.

Respectfully,

SANITAS SERVICE CORPORATION



David Weintraub

President and Chief Executive Officer



PRESS RELEASE ISSUED BY SANITAS SERVICE CORPORATION, FOR RELEASE  
APRIL 13, 1973

FOR: SANITAS SERVICE CORPORATION, 151 WALNUT STREET, HARTFORD, CONNECTICUT  
CONTACT: HARLAN J. ROSENBERG (203) 549-2500

FOR RELEASE ON FRIDAY, APRIL 13, 1973

Sanitas Service Corporation today announced that it has established a reserve of \$1,400,000 for the estimated loss on a receivable which arose from the prior sale of its Detroit industrial laundering business to a limited partnership. The limited partnership includes among its partners, officers and directors of the company. The partnership, whose sole business is the operation of this laundry, has sustained heavy losses from these operations and is selling the assets for prices, (not finally determined), which, together with the partnership's remaining net assets, will be substantially less than the amount owed to the company.

The company has also established a reserve of \$1,500,000 for an estimated loss from the proposed disposition of its limited purpose real property which housed the Detroit laundering facility leased to the partnership.

These reserves, aggregating \$2,900,000 less the estimated applicable Federal income tax effect of \$980,000, will result in an extraordinary charge to income of approximately \$1,920,000 in the results from operations for the nine months ended March 31, 1973. The establishment of these reserves will not adversely affect the company's working capital or results from operations before extraordinary items.

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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JAY HANDWERGER,	:	
	:	Index No.
Plaintiff,	:	
	:	73 Civ. 4832 (HFW)
- against -	:	
CHARLES GINSBERG, JR., DAVID	:	
WEINTRAUB, ABRAHAM WEINTRAUB,	:	<u>AFFIDAVIT</u>
ALAN R. CARP, JAMES P. SANDLER	:	
A. THEODORE BARRON, STANLEY	:	
FROST, EDWARD GINSBERG, NOAH	:	
GOLDBERG, JOHN W. HURLEY, ALLAN	:	
LAZAROFF, SANFORD L. ROSENBERG,	:	
HEINZ SCHNEIDER, ROBERT B. SEGAL,	:	
MARTIN UNGER, AARON WEINTRAUB,	:	
HARRY WEINTRAUB, SANITAS SERVICE	:	
CORPORATION and ARTHUR ANDERSEN	:	
& CO.,	:	
	:	
Defendants.	:	

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LAURENCE V. SENN, JR., being duly sworn, deposes  
and says:

1. I am an attorney associated with Mudge Rose  
Guthrie & Alexander, attorneys for all defendants herein,  
excepting A. Theodore Barron and Arthur Andersen & Co.  
I am fully familiar with the facts set forth herein and  
make this affidavit in opposition to plaintiff's motion for  
a class determination.

2. Plaintiff seeks to bring this securities fraud  
action as a class action on behalf of all purchasers of  
Sanitas Service Corporation securities between September 21,  
1972 (the date the first alleged misrepresentations occurred)  
and April 13, 1973 (the date the alleged misrepresentations  
were disclosed). There are two types of Sanitas securities



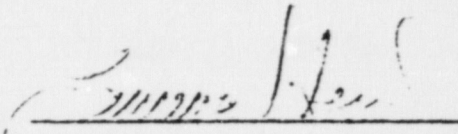
which were traded during the class period: common stock and 9% debentures convertible into common stock at \$8.00 per share.

3. Plaintiff purports to represent all purchasers between the aforementioned dates regardless of whether such purchasers still retain their securities and regardless of whether such purchasers bought common stock or debentures. Since plaintiff purchased only debentures during the class period (Complt. ¶5) and still retains them (Handwerger deposition p. 8) he cannot represent either (a) those who have sold their Sanitas purchases or (b) those who purchased common stock, since he is not a member of the classes comprised by such purchasers.

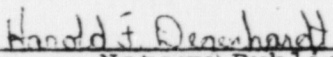
4. Moreover, there is a substantial danger that the interests of the sole plaintiff herein, as a present debenture holder, will come into conflict with the interests of those with no present stake in Sanitas and with the interests of those holding only common stock. As is apparent from the Sanitas Form 10-Q filing with the Securities & Exchange Commission for the quarter ending March 31, 1974, annexed hereto as Exhibit A, Sanitas has recently experienced declining fortunes, especially in terms of net income. Additionally, Sanitas has found it necessary to request forbearance from its major creditors.

(Exhibit B). Although there is no present estimate of the amount of damages which plaintiff's purported class may recover herein, it is obvious that any substantial recovery would seriously reduce the value of Sanitas securities.

5. It is submitted, therefore, that plaintiff's continuing interest in Sanitas bars him from representing those with no such present interest and that his preferred position as a debenture holder prevents him from representing common shareholders.

  
Laurence V. Senn, Jr.

Sworn to before me this  
13th day of September, 1974.

  
Notary Public  
HAROLD F. DEGENHARDT  
Notary Public, State of New York  
No. 43-4518343 Qual. in Richmond Co.  
Cert. filed in New York County  
Commission Expires March 30, 1976



SECURITIES AND EXCHANGE COMMISSION  
Washington, D. C. 20549

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FORM 10-Q

QUARTERLY REPORT UNDER SECTION 13 or 15 (D)  
OF THE SECURITIES EXCHANGE ACT OF 1934.For Quarter Ended March 31, 1974Commission file number 1-6131SANTAS SERVICE CORPORATION

(Exact name of registrant as specified in it's charter)

Connecticut06-0713784(State or other jurisdiction of  
incorporation or organization)(I.R.S. Employer Identifi-  
cation No.)151 Walnut Street, Hartford, Connecticut  
(Address of principal executive office)06120  
(Zip Code)Registrant's telephone number, including area code (203) 549-2500

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15 (d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes X No

## SANITAS SERVICE CORPORATION AND SUBSIDIARIES

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## Profit and Loss Information

PART A

	For the Nine Months Ended (in 000's)	
	<u>March 31, 1974</u>	<u>March 31, 1973</u>
Operating revenues	<u>\$81,013</u>	<u>\$74,411</u>
Other income (expense), net	<u>(542)</u>	<u>262</u>
Costs and expenses:		
Operating expenses	64,825	56,302
Selling, general and administrative expenses	12,843	12,029
Interest expense	<u>3,110</u>	<u>2,287</u>
Total costs and expenses	<u>80,778</u>	<u>70,618</u>
Income (loss) before loss on dispositions	(297)	4,055
Loss on dispositions	<u>(690)</u>	<u>(2,900)</u>
Income (loss) before Federal taxes on income	(997)	1,155
Provision for Federal taxes on income	<u>-</u>	<u>(967)</u>
Net Income (loss)	<u>\$ (997)</u>	<u>\$ 188</u>
Net Income (loss) per share (based on 9,033,881 and 8,809,508 shares, respectively)	\$ (.11)	\$ .02
Dividends per share	None	\$ .09

## Notes:

1. This information is unaudited and has been prepared from the books and records of the Corporation and reflects, in the opinion of the Corporation, all adjustments necessary to a fair statement of the results of operations for the interim periods.

2. As originally reported, revenues and net income for the nine months ended March 31, 1973 were \$74,654,788 and \$907,641, respectively. These figures included the establishment of a reserve of \$1,920,000 for the net loss to be realized upon the disposition of the Corporation's then wholly-owned subsidiary, Economy Linen Service. These results have been restated to reflect acquisitions for which the accounting treatment was changed from a pooling of interest to a purchase and the reversal of an investment tax credit, which was not used. For the fiscal year ended June 30, 1973, the Corporation sustained a net loss of \$1,292,611, after recording material charges of \$2,051,000. A major portion of such material charges are not



allocable amongst the interim periods; and, therefore, the results for the nine month period ended March 31, 1973, as restated, are not truly comparable. The average number of shares outstanding for the nine months ended March 31, 1973 has been adjusted for shares subsequently issued upon the occurrence of the events which are the subject of contingent share delivery agreements.

3. Net income as previously reported for the six month period ended December 31, 1973 was \$198,000 or 2¢ per share. The net loss for the three months ended March 31, 1974 included charges to income of \$600,000 for the anticipated loss to be sustained upon the disposition of the Corporation's waste hauling operations located in Detroit, Michigan, and \$350,000 charged to income for the loss anticipated to be sustained in connection with the settlement of a contractual dispute at Booth Services, Inc., (the Corporation's wholly-owned subsidiary engaged in pipeline construction).

In addition to the above charges, the results for the nine months ended March 31, 1974 reflect operating losses incurred from discontinued and to be discontinued operations aggregating \$853,000 on revenues of \$4,370,000. For the quarter ended March 31, 1974, these losses aggregated \$430,000 on revenues of \$855,000. Additionally, the reserves established for losses on dispositions in the amount of \$300,000 at December 31, 1973 have been utilized during the third quarter. No federal income tax benefit has been recorded since the use of the current years net operating loss is dependent on future taxable income. Although the quarter ending June 30, 1974 is estimated to result in an operating profit, the results for the twelve months ending June 30, 1974 are estimated to show a net loss.

4. The holder of the Corporation's \$3.7 million equipment loan (not part of the Corporation's \$15.6 million credit agreement loan) has agreed to defer the maturity of such loan. This arrangement supercedes the Corporation's prior commitment, previously disclosed, to supply the lender, on or before May 6, 1974, with a bona fide commitment to repay the loan within a reasonable time thereafter. Additionally, another bank has agreed to participate with the original holder in the loan to the extent of \$600,000. The Corporation commenced the amortization of the loan at a rate of \$100,000 per month for a 32 month period on April 26, 1974. Five hundred thousand dollars (\$500,000) of the original indebtedness was paid in February, 1974, reducing the outstanding principal balance to \$3,200,000. The \$500,000 was borrowed from another lending institution, and is being repaid at the rate of \$100,000 per month from February, 1974.

As previously reported, the banks had been requested to waive a possible violation of the credit agreement's current ratio requirement which may have arisen due to the current maturity of the \$3.7 million equipment loan. The required ratio is 1.1 to 1. As of March 31, 1974, the current ratio is 1.01 to 1., and the waiver of the requirement continues in effect.

5. Net income per share amounts are based on the average number of shares outstanding during the periods together with shares which are issuable due to the market price of the Corporation's stock or the increased earnings of certain

purchased businesses. Net income per share would not be materially diluted by the additional number of shares which would have been outstanding had (a) those contingently issuable shares, which have not been included in the calculation, been deliverable based upon current earnings levels of certain subsidiaries, (b) outstanding options to purchase common stock been exercised during the year assuming the proceeds of such exercise were used to acquire treasury shares at the higher of the average market price during the year or the market price at the end of the year, and (c) the 9% convertible subordinated debentures been converted into common stock.



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## SANITAS SERVICE CORPORATION AND SUBSIDIARIES

## Capitalization and Stockholders' Equity

March 31, 1974

PART BDebt

Short-Term Loans, Notes, etc.	\$6,892,547
Long-term debt:	
Convertible subordinated debentures	8,205,000
Revolving credit notes payable to banks at 1.25% over prime	4,000,000
Term loans payable to banks at 1.50% over prime	9,556,250
Other at rates from 4-15%	10,845,781
Total Debt	<u>\$39,499,578</u>

Stockholders' Equity

Common Stock, issued 9,176,789 shares and outstanding 8,955,867 shares	<u>\$16,287,946</u>
Retained earnings:	
Balance at beginning of current fiscal year (Restated)	1,654,450
Net income (loss)	(997,521)
Balance at end of interim period	657,019
Total stockholders' equity	<u>\$16,944,965</u>

## Notes:

1. Issued shares include 220,922 shares issued into escrow in connection with certain acquisitions which will be released upon the fulfillment of contingencies.

2. There are 354,681 shares reserved for issuance under the Corporation's Qualified Stock Option Plan, 25,325 shares reserved for issuance under the Corporation's Key Management Stock Bonus Plan, 147,800 shares reserved for issuance under the Corporation's Non-qualified Stock Option Plan, 76,264 shares reserved for issuance in connection with certain acquisitions which will be issued upon the fulfillment of certain contingencies, and 1,025,625 shares reserved for issuance upon conversion of debentures.

3. The 9% convertible subordinated debentures, due in 1990, are convertible into the Corporation's common stock at \$8 per share.

4. Included in long-term debt is \$6,351,851 due within one year. The prime rate at March 31, 1974 was 9-1/2%. Maturities on long-term debt extend through 1992.

## SANITAS SERVICE CORPORATION AND SUBSIDIARIES

PART C

During the fiscal quarter ended March 31, 1974, no securities of Sanitas Service Corporation were sold, which were not registered under the Securities Act of 1933.

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

SANITAS SERVICE CORPORATION



Alan R. Carp, President and Chief  
Executive Officer

May 14, 1974



THE WALL STREET JOURNAL - THURSDAY - FEBRUARY 14, 1974

## Sanitas Requests Delay In Payments to 4 Banks On \$14.3 Million Loan

*By a WALL STREET JOURNAL Staff Reporter*

HARTFORD, Conn.—Sanitas Service Corp. said it has requested a delay for principal and interest payments due March 31 to four banks to which Sanitas owes \$14.3 million.

Sanitas said it asked for the delay because it isn't certain it could come up with the \$250,000 in principal and \$400,000 in interest due then. The four banks are First Pennsylvania & Trust Co., Philadelphia; Industrial National Bank, Providence, R.I.; Union Bank of California, and American Bank & Trust Co. of New York.

The delay request is the latest in a series of problems for the waste control and building maintenance concern. Trading in the company's stock, which is listed on the American Stock Exchange, was suspended for two months last year by the Securities and Exchange Commission, and last November the SEC notified Sanitas that the agency was investigating several of the corporation's affairs, including the possibility of insider trading in Sanitas securities.

Sanitas also said it has asked the four banks to waive a possible violation of the credit agreement under which it owes the \$14.3 million. The possible violation involves a decline in the company's asset-to-liability ratio to 1.07 to one, which is under the 1.1 to one required by the agreement. Sanitas said the required ratio would be restored if it refinances a \$3.7 million equipment loan that has matured.

Sanitas also said that for the first half, ended Dec. 31, its profit fell sharply to \$198,000, or two cents a share, from \$2 million, or 23 cents a share. Revenue rose a bit to \$55 million from \$50 million, Sanitas said.

JIA

SUPPLEMENTAL AFFIDAVIT OF LAURENCE W. SENN, JR. IN OPPOSITION  
TO MOTION FOR CLASS DETERMINATION, SWORN TO SEPTEMBER 20, 1974

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
JAY HANDWERGER,

Plaintiff,

- against -

CHARLES GINSBERG, JR., DAVID  
WEINTRAUB, ABRAHAM WEINTRAUB,  
ALAN R. CARP, JAMES P. SANDLER,  
A. THEODORE BARRON, STANLEY FROST,  
EDWARD GINSBERG, NOAH GOLDBERG  
JOHN W. HURLEY, ALLAN LAZAROFF,  
SANFORD L. ROSENBERG, HEINZ  
SCHNEIDER, ROBERT B. SEGAL,  
MARTIN UNGER, AARON WEINTRAUB,  
HARRY WEINTRAUB, SANITAS SERVICE  
CORPORATION, and ARTHUR ANDERSEN  
& CO.,

Defendants.  
-----X

9-20-74  
*Mr. Senn*  
: Index No. 73 Civ. 4832  
(HFW)

: SUPPLEMENTAL AFFIDAVIT

LAURENCE V. SENN, JR., being duly sworn, deposes and  
says:

1. I am an attorney associated with Mudge Rose  
Guthrie & Alexander, attorneys for all defendants herein,  
excepting A. Theodore Barron and Arthur Andersen & Co. I am  
fully familiar with the facts set forth herein and make this  
supplemental affidavit in opposition to plaintiff's motion for  
a class determination.

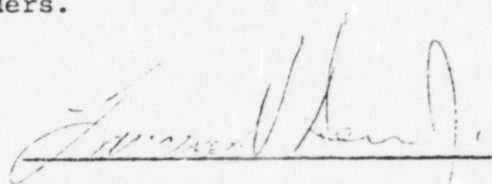
2. We have previously submitted a memorandum of law  
and supporting affidavit in opposition to plaintiff's motion  
for class determination.



3. Our opposition to the class herein was based, in part, upon the substantial danger that the interests of plaintiff, who had purchased only debentures during the class period and who still retained them, might come into conflict with the interests of those members of the class who have no present stake in Sanitas or who hold only common stock. The prior affidavit referred to the present financial situation of Sanitas as supporting the likelihood that this conflict would become a problem.

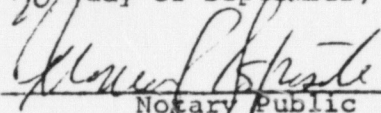
4. Since that affidavit was filed, additional information has become available which should be before the Court in connection with this motion. In a press release dated September 17, 1974 (annexed hereto as Exhibit A) and a Wall Street Journal article of September 18, 1974 (annexed hereto as Exhibit B), it is reported, among other things, that for the fiscal year ending June 30, 1974 Sanitas has preliminarily shown a net loss of \$5.5 million on revenue of \$106 million. It is also reported Sanitas is unable to meet the principal and interest requirements on its major debts.

5. This additional information reinforces our conclusion that plaintiff's continuing interest in Sanitas bars him from representing those with no such present interest and that his preferred position as a debenture holder prevents him from representing common shareholders.



Laurence V. Senn, Jr.

Sworn to before me this  
20<sup>th</sup> day of September, 1974.



Notary Public

THOMAS R. ESPOSITO  
Notary Public, State of New York  
No. 03-022016, Qual. in Bronx Co.  
Certificate Expires July 30, 1976

SANTAS SERVICE CORPORATION  
151 Walnut Street  
Hartford, Connecticut 06120

**53 A**  
(203, 549-2500)

CONTACT: Charles P. McLarnon  
Vice President, Secretary and Treasurer

FOR IMMEDIATE RELEASE

Hartford, Conn. (September 17, 1974)....Alan R. Carp, President and Chief Executive Officer of Santas Service Corporation (AMEX) today announced that preliminary unaudited results for its fiscal year ended June 30, 1974, indicate that the Corporation expects to sustain a net loss of \$5,500,000 on expected revenues of approximately \$106,000,000. For the nine months ended March 31, 1974, the Corporation previously reported an unaudited net loss of \$997,000 on revenues of \$81,000,000.

The difference between the nine month unaudited results and the twelve month unaudited results is attributable to charges reflected in the fourth quarter of fiscal 1974 totalling \$4,500,000. These charges are allocable to the following: (1) On May 31, 1974, the Corporation announced the establishment of a \$1,000,000 pre-tax reserve for losses to be incurred upon the disposition of certain of its Detroit, Michigan non-hauling waste disposal operations. In August, 1974, the Corporation completed the disposition, effective as of June 30, 1974, of its Detroit, Michigan hauling operations. Although \$600,000 had been reserved in the nine month financial statements for the expected loss on this latter disposition, the completed disposition indicates that the loss will approximate \$1,100,000 and, accordingly, an additional reserve of \$500,000 has been recorded in the fourth quarter of fiscal 1974; (2) a write-down of the valuation of certain of the Corporation's tangible and intangible assets approximating \$2,000,000, (3) the establishment of an additional reserve totalling \$600,000 for losses to be incurred upon the disposition of selected assets, (4) the establishment of a reserve amounting to \$150,000 reflecting the estimated contingent liability attendant with



the costs to close one of the Corporation's landfills, and (5) retrospective insurance adjustments aggregating approximately \$300,000.

For the fiscal year ended June 30, 1973, the Corporation sustained a net loss of \$1,292,611 on revenues of \$99,057,253.

These preliminary results for fiscal 1974 reflect revenues and operating losses amounting to \$4,850,000 and \$1,103,000 respectively, from operations disposed of as at June 30, 1974, and also losses incurred on the sale of these companies totalling \$1,190,000.

As previously reported, the Corporation is engaged in a program of disposing of certain of its assets for the purpose of improving its financial posture. Toward this end, on July 31, 1974, the Corporation announced the completion of the sale of its three California industrial laundering operations which resulted in a pre-tax gain of approximately \$1,000,000. This gain will be reflected in the results from operations for the Corporation for the first quarter of its fiscal year ending June 30, 1975.

At the present time, the Corporation is in the process of completing the sale of five of its operations which are scheduled to close on or before September 30, 1974, and are anticipated to yield aggregate cash proceeds of \$1,030,000.

At the present time, the Corporation is not generating sufficient internal cash flow to meet the principal and interest requirements of its major debt obligations. Therefore, just as the Corporation utilized \$833,000 of the cash proceeds from the sale of its three California companies to prepay the principal payment in that amount due September 30,

1974 on its \$11,607,000 bank loan, the Corporation proposes to utilize a portion of the cash proceeds generated by the dispositions presently being effected to pay the interest payment of \$426,000 on such bank loan due September 30, 1974, and the interest payment of \$369,225, due October 1, 1974 on its 9% Convertible Subordinated Debentures. However, the Corporation can give no assurances that such dispositions will be completed on a timely basis to permit such payments.

The Corporation is in discussion with the banks participating in its bank loan looking towards a restructuring of the loan upon a major reduction of the balance outstanding from the proceeds of additional dispositions to be effected by the Corporation in the future.



## Sanitas Expects to Post \$5.5 Million Net Loss In Year Ended June 30

By a WALL STREET JOURNAL Staff Reporter

HARTFORD, Conn. — Sanitas Service Corp. said preliminary results for its fiscal year ended June 30 show a net loss of \$5.5 million on revenue of \$106 million.

For the nine months ended March 31, the company reported a \$997,000 net loss on revenue of \$81 million. The difference between the two sets of results stems from \$4.5 million in charges in the fiscal fourth quarter. The waste-control and building-maintenance concern said these charges reflect a \$1 million pretax loss reserve on disposition of certain operations, an additional \$300,000 reserve, a write-down of about \$2 million in assets, other additional reserves of \$750,000 and retrospective insurance adjustments of \$200,000.

For the 1973 fiscal year, the net loss was \$1.3 million on revenue of \$99.1 million after charges of \$2.1 million.

The company said this year's losses are based on the sale of certain operations. A pretax gain of about \$1 million from the July 31 sale of its three California industrial-laundering operations will be reflected in earnings for the fiscal first quarter of 1975. The company is also scheduled to close five more operations by Sept. 30 and should receive about \$1 million in cash proceeds, it said.

Sanitas said it isn't able to meet the principal and interest requirements on its major debts. It plans to use part of the cash from this month's dispositions to pay a \$426,000 bank-loan interest payment due Sept. 30 and a \$269,225 interest payment due Oct. 1 on its 9% convertible subordinated debentures.

The company added that it isn't certain whether the dispositions will "be completed on a timely basis to permit the payments." It also said it's meeting with four banks to try to restructure its \$11.6 million loan after the balance is reduced through the sale of additional operations.

The four banks are First Pennsylvania Banking & Trust Co., Philadelphia; Industrial National Bank, Providence, R.I.; Union Bank of California, and American Bank & Trust Co. of New York.

Trading in the company's stock, which is listed on the American Stock Exchange, was temporarily halted yesterday pending release of Sanitas' audited earnings for fiscal 1974.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- x

JAY HANDWERGER,

Plaintiff,

73 Civ. 4832 (HFW)

- against -

CHARLES GINSBERG, JR., et al.,

AFFIDAVIT

Defendants.

----- x

STATE OF NEW YORK )  
                              ) SS.:  
COUNTY OF NEW YORK)

DAVID J. BERSHAD, being duly sworn, deposes and says:

1. I am a member of Milberg & Weiss, attorneys for plaintiff in this action and I make this affidavit to bring before the Court facts with regard to the numerosity of the class plaintiff seeks to represent herein.

2. I have caused a brokerage firm, which is a member of the New York Stock Exchange, to advise me of the trading volume of the Sanitas' convertible debentures which are one of the securities covered by this class action. That firm, Prescott, Ball & Turbin, has advised me that during the period between September 21, 1972 and April 13, 1973 there were approximately 2,094 debentures of Sanitas which were traded on the American Stock Exchange ("AMEX") bond market. Assuming that the average purchaser bought 10 debentures, and it is respectfully suggested that that is a high average, there would be more than 200 class members who purchased debentures. During the same period approximately 978,000




shares of common stock of Sanitas traded on the AMEX. Assuming the average purchase to be 200 shares, and, again it is respectfully suggested that this is a high average, there would be close to 4,000 persons who purchased the common stock.

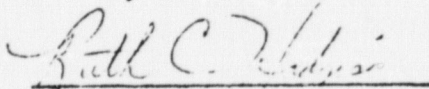
3. The trading in debentures and common stock referred to above was relatively evenly distributed throughout the period, which period encompassed approximately 140 trading days, leading to the conclusion that a great many different people bought the Sanitas securities.

4. Based on the foregoing, it seems apparent to me that the numerosity requirement of Federal Rule 23 is met in this action.

5. At the present time, I am advised, there is a trading halt in the securities of Sanitas on the AMEX and that, with great difficulty, said securities might be sold in the over-the-counter market for nominal amounts. As of October 25, 1974, there was no bid whatsoever for the common stock which was offered at approximately \$.37 per share and the bid for the debentures was approximately \$150.00 per \$1,000 face amount. From the foregoing, it is clear that the class members have sustained literally millions of dollars of damages resulting from the decline in the market price of Sanitas securities. This action is their only avenue to obtain a hearing on the merits of their claims and an award of damages. If class action status is denied, these purchasers of Sanitas securities will have been effectively foreclosed from an opportunity to be heard in Court.

  
DAVID J. BERSHAD

Sworn to before me this  
30<sup>th</sup> day of October, 1974.

  
Ruth C. Hagg

RUTH C. HAGG  
NOTARY PUBLIC, State of New York  
Qualified in the City of New York  
Commission Expires March 30, 1975

**Memorandum Decision of Judge Werker,  
Dated January 2, 1975**

HENRY F. WERKER, D. J.

Plaintiff has moved pursuant to Rule 23 of the Federal Rules of Civil Procedure for an order declaring that this action shall proceed as a class action. The complaint alleges violations of section 10(b) of the Securities and Exchange Act of 1934, 15 U.S.C. §78j(b); Rule 10b-5, and common law fraud. Jurisdiction is based on 15 U.S.C. §78aa and pendent jurisdiction.

BACKGROUND

The plaintiff is the purchaser of \$5000 in convertible debentures which were purchased on January 23, 1973. He sues on behalf of himself and all other purchasers of Sanitas Service Corporation securities during the period between September 21, 1972 and April 13, 1973. Proposed class members would include: (1) purchasers of debentures during the material period who are still holders as is plaintiff; (2) purchasers of debentures during the material period who have sold the same whether during the period or subsequent thereto; (3) purchasers of common stock of Sanitas during the material period who still are holders; (4) purchasers of common stock during the material period who sold during or after the material period.

The gravamen of the complaint is to the effect that Sanitas during the material period and during the year ending June 30, 1972 was engaged in several different businesses through the operation of divisions and subsidiary corporations. One of these businesses was called Detroit Industrial Laundry Business which was also known as the Economy Linen Service Division. For the 12 months



*Memorandum Decision of Judge Werker*

ending June 30, 1971, Economy sustained a loss of \$386,000 and for the 12 month period ending June 30, 1972, losses of approximately \$1,220,000. These losses were a drain upon Sanitas and had a depressing effect upon Sanitas securities market value. The complaint charges that Sanitas and the individual defendants schemed and conspired to inflate and maintain the market price of Sanitas securities by purporting to sell Economy Linen effective July 1, 1972. Thus investors were led to believe that Sanitas would no longer sustain any losses in connection with Economy Linen. It is alleged that the "sale" was illusory and that Sanitas would be required to bear the risk of further operating losses. In addition, the inability of the purchasers to sell Economy would cause further loss to Sanitas. The consolidated statement of Sanitas for June 30, 1972, purported to reflect the entire loss on the sale in the amount of \$2,729,249, which was in addition to the loss of \$1,220,000 from the operations of Economy. This while reducing the net income of Sanitas for the year 1972 also created the impression that all of the losses in connection with Economy was behind Sanitas and that the poor operating results of that division would no longer blemish the earnings of Sanitas.

The sale in fact was to a limited partnership consisting of Sanitas officers and directors and a corporate partner which had limited assets and was unable to pay the purchase obligations incurred by the limited partnership. The limited partnership subsequently defaulted in its obligations to Sanitas and this required Sanitas to report additional losses of approximately \$2,900,000 arising from Economy early in 1973. The disclosure of the sale was

*Memorandum Decision of Judge Werker*

made about September 21, 1972, in a letter to stockholders, brokerage firms and members of the investment community. The disclosure of additional losses was made on or about April 13, 1973 in a press release issued by Sanitas. These are the effective dates requested by plaintiff for determination of the class action.

## THE REQUIREMENTS OF RULE 23

During the period involved approximately 2094 debentures and approximately 978,000 shares of the Sanitas corporate securities were traded on the American bond and stock markets. At an average of 10 debentures per person and 200 shares per person this would mean that a class of 200 debenture holders and 4000 stockholders would be created. This would lead to the conclusion that the first requirement of Rule 23(a), that the class is so numerous that joinder of all members is impracticable, has been satisfied.<sup>1</sup> There is a trading halt in the securities although they may be sold over the counter at approximately \$150 per \$1000 face value for the debentures and \$.37 per share for the stock.

Certainly whether it be with respect to the debentures or the shares of defendant Sanitas there are questions of law and fact common to the class.<sup>2</sup> These would involve without limitation whether the alleged representations with respect to the sale of Economy were materially misleading;

1. Plaintiff need not show the exact number of class members. See, e.g., *Dolgow v. Andersen*, 43 F.R.D. 472 (E.D.N.Y. 1968); *Fischer v. Kletz*, 41 F.R.D. 377 (S.D.N.Y. 1966).

2. Class actions are particularly appropriate in cases, such as the case at bar, where violations of the federal securities laws are involved. See Advisory Committee Note to Rule 23, 39 F.R.D. at 103.



*Memorandum Decision of Judge Werker*

whether the omissions were similarly so; whether there was scienter on the part of the persons in control as to the effect of the agreement of sale; and whether those persons indeed conspired to cause that effect, *i.e.*, to maintain or inflate the market value of Sanitas securities.

The claims or defenses of the representative parties are typical of the claims or defenses of the class. I can see no substantial difference between the claims of the debenture holders and the shareholders in the posture of this case.<sup>3</sup> Both are seeking damages to recoup the losses

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3. Compare *Green v. Wolf* (*sic*), 406 F.2d 291 (2d Cir. 1968), *cert denied*, 395 U.S. 977 (1969); and *Fischer v. Kletz*, 41 F.R.D. 377 (S.D.N.Y. 1966); and *In re Consolidated Pretrial Proceedings in Ampex Securities Cases*, Docket No. C-72-360 (N.D. Cal. April 10, 1974); and *In re Ceasars Palace Securities Litigation*, CCH Sec. L. Rep. ¶94,005 (E.D. Pa. 1973), with *Dolgozo v. Andersen*, *supra*; and *Herbst v. Able*, 45 F.R.D. 451 (S.D.N.Y. 1968); and *Carlisle v. LTV Electrosystems*, 54 F.R.D. 237, 239 (N.D. Tex. 1972). If, during the process of the litigation, questions of conflict of interest or adequacy of representation develop, then subclasses could be formed pursuant to Rule 23(c) (4).

Defendants also seek to limit the class to those who still hold their Sanitas Securities, and would eliminate those who have already sold their securities. Defendants cite *Free World Foreign Cars, Inc. v. Alfa Romeo S.P.A.*, 55 F.R.D. 26 (S.D.N.Y. 1972) (adverse interest between an exfranchisee and current franchisees), and *Wood v. Rex-Noreco, Inc.*, 61 F.R.D. 669 (S.D.N.Y. 1973) (conflict between a substantial equity holder and those who have already sold). The crux of defendants' argument is that those security holders who still own Sanitas Securities have an interest in the economic viability of the corporation, whereas those who have already sold are only interested in collecting damages. This precise argument has recently been rejected by Judge Metzner in *Madonick v. Denison Mines Limited*, 63 F.R.D. 657 (S.D.N.Y. 1974). There, as here, no genuinely antagonistic interests existed (*see, e.g., Guttman v. Braemer*, 51 F.R.D. 537 (S.D.N.Y. 1970)). There as here [and unlike *Wood*], the plaintiff did not have a substantial equity interest in the corporation.

Further attempts to limit the class by eliminating those members who purchased after September 21, 1972, but sold prior to April 13, 1973 (the date of disclosure of additional losses) must also fail. Defendants argue that losses sustained by those who sold prior to April

(footnote continued on next page)

*Memorandum Decision of Judge Werker*

suffered allegedly by the misrepresentations and omissions of the defendants. It may be true that debenture holders have first call as creditors and those shareholders still retaining their shares are interested in continued corporate operation, but that difference in rights in the event of insolvency cannot prejudice the separate and independent rights of redress for fraud. The differences in damages are not relevant to the determination of whether the remedy may be pursued as a class action. Similarly the attack upon the plaintiff upon the ground that he has a special interest by way of relationship to the Chairman of the Board and President of Sanitas and that as a debenture holder he cannot represent the classes earlier outlined because of an assumed conflict must fail. The plaintiff's debentures in no way represent a significant portion of the issued debentures—five thousand as opposed to face value eight million two hundred thousand. The contention that a relationship of cousin by marriage without any evidence which would convert plaintiff into an “insider” by disclosure of inside information is completely untenable.

This court is not persuaded at this juncture that plaintiff could not fairly and adequately protect the interests of the class. There is of course the possibility that as discovery proceeds another result would be desirable, but there is a provision in the class action order which reserves to the court the right to amend or designate subclasses in the event that proves necessary. See Rule 23(c)(4). Plaintiff's counsel would from the record ap-

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13, 1973, cannot be attributed to any misrepresentations or omissions. However, a purchaser who bought after September 21, 1972 may have paid an artificially high price and could have suffered damages equal to the differences between the artificial price and the true market value of the stock.



*Memorandum Decision of Judge Werker*

pear to be competent and able to pursue this litigation diligently and is consequently designated as lead counsel.

I also find that common questions of law and fact predominate over individual cases. The defendants argue that proof of individual reliance of each class member is necessary and therefore the common questions do not predominate. The complaint alleges both misrepresentations and omissions. The requirement of providing individual reliance in cases involving omissions was eliminated in *Affiliated UTE Citizens v. United States*, 406 U.S. 128 (1972). Even in cases involving misrepresentations, individual questions of reliance have not prevented the formation of a class. See, e.g., *Green v. Wolf Corp.*, *supra*; *Mersay v. First Republic Corp.*, 43 F.R.D. 465 (S.D.N.Y. 1968); *Herbst v. Able*, *supra*.

No objections have been raised relating to questions of management of the action and notice to all class members. This is not a "massive consumer-type" action. In this securities fraud case, a class action is clearly superior to any other method of conducting the litigation.

Defendant Andersen's contention with respect to a limitation of its liability as to any facts coming to light after September 14, 1972, the date of its opinion, may be decided at a later time. It has no relevancy to the question of the class action determination.

Plaintiff's counsel is to submit an order in accordance with this decision and in the form recommended in the Manual for Complex Litigation §1.45 at 159 together with a form of notice and a form of exclusion request.

SO ORDERED.

Dated: New York, New York  
January 2, 1975

Henry F. Werker  
U. S. D. J.

THE SECOND CIRCUIT OF DEFENDANT ARTHUR ANDERSEN & CO.,  
DATED JANUARY 31, 1975  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

65A

65 A

-X

JAY HANDWERGER, :

Plaintiff, :

-against- :

73 Civ. 4832 (H.F.W.)

CHARLES GINSBERG, JR., DAVID : NOTICE OF APPEAL  
WEINTRAUB, ABRAHAM WEINTRAUB, :  
A. THEODORE BARRON, ALAN R. CARP, :  
JAMES P. SANDLER, STANLEY FROST, :  
EDWARD GINSBERG, JOHN W. HURLEY, :  
NOAH GOLDBERG, SANFORD L. :  
ROSENBERG, ALLAN LAZAROFF, HEINZ :  
SCHNEIDER, AARON WEINTRAUB, :  
ROBERT B. SEGAL, MARTIN UNGER, :  
SANITAS SERVICE CORPORATION, :  
HARRY WEINTRAUB and ARTHUR :  
ANDERSEN & CO., :

Defendants. :

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S I R S :

NOTICE IS HEREBY GIVEN, that defendant Arthur Andersen & Co., a defendant in the above-captioned action, hereby appeals to the United States Court of Appeals for the Second Circuit from the Order of the Honorable Henry F. Werker entered in this action on January 2, 1975, granting plaintiff's motion for class determination pursuant to Rule 23 Fed. R. Civ. P.

Dated: New York, New York  
January 31, 1975

BREED, ABBOTT & MORGAN  
Attorneys for Defendant  
Arthur Andersen & Co.  
Office and P. O. Address  
One Chase Manhattan Plaza  
New York, New York 10005

By 13/ JAMES D. ZIRIN  
A Member of the Firm

Of Counsel:

Charles W. Boand, Esq.  
WILSON & McILVAINE  
135 South LaSalle Street  
Chicago, Illinois 60603



66 A

TO: MILBERG & WEISS, ESQS.  
Attorneys for Plaintiff  
One Pennsylvania Plaza  
New York, New York 10001

MUDGE ROSE GUTHRIE & ALEXANDER, ESQS.  
Attorneys for Sanitas and all  
Appearing Individual Defendants  
20 Broad Street  
New York, New York 10005

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

- - - - -X  
JAY HANDWERGER, :  
 :  
Plaintiff-Appellee :  
 :  
-against- : AFFIDAVIT OF SERVICE  
 : ON PERSON IN CHARGE  
CHARLES GINSBERG, JR., et al., :  
 :  
Defendants :  
 :  
ARTHUR ANDERSEN & CO., :  
 :  
Defendant-Appellant :  
- - - - -X

STATE OF NEW YORK )  
 : ss.:  
COUNTY OF NEW YORK )

HARRY KING being duly sworn, says: I am  
employed in the office of Breed, Abbott & Morgan, 1 Chase  
Manhattan Plaza, New York, N.Y. 10005, attorneys for the  
defendant-appellant in the above action.

On the 14th day of March, , 19 75, between the  
hours of 9:30 A.M. and 5:30 P.M., I served the annexed

JOINT APPENDIX

on the attorney(s) listed below by delivering the same to and  
leaving the same with the person in charge of said office(s).

Milberg & Weiss, Esqs., Attorneys for Plaintiff-Appellee,  
Jay Handwerger, One Pennsylvania Plaza, New York, N.Y. 10001

Mudge, Rose, Guthrie & Alexander, Esqs., Attorneys for all  
defendants except Arthur Andersen & Co., 20 Broad Street,  
New York, N. Y.

Sworn to before me this  
14th day of March, 19 75

EDNA G. WATROUS  
NOTARY PUBLIC, City of New York  
No. 252,055  
Qualified in Kings County  
Certificate Filed in New York County  
Commission Expires March 30, 1979

*Harry King*  
Harry King